

UNITED STATES DISTRICT COURT

HONORABLE JOHN A. KRONSTADT, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME I

WEDNESDAY, JUNE 19, 2019

A P P E A R A N C E S

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JUNE 19, 2019; 8:26 A.M.

2 ---

3 THE COURT: Good morning. We're on the record in
4 CR 18-00050, United States v. Yi-Chi Shih.

5 Would you state your appearances, please.

6 MS. HEINZ: Good morning, Your Honor. Judith Heinz
7 on behalf of the United States. With us at counsel table is
8 Special Agent Alex Storino of the Federal Bureau of
9 Investigation.

10 THE COURT: Good morning to both of you.

11 MR. ROLLINS: Good morning, Your Honor. Will
12 Rollins on behalf of the United States.

13 THE COURT: Good morning, Mr. Rollins.

14 MR. SHOBAKI: Good morning, Your Honor. Kal
15 Shobaki on behalf of the United States.

16 THE COURT: Good morning, Mr. Shobaki.

17 MR. HUGHES: Good morning, Your Honor. James
18 Hughes on behalf of the United States.

19 THE COURT: Good morning, Mr. Hughes.

20 MS. SARTORIS: Good morning, Your Honor. Melanie
21 Sartoris on behalf of the United States.

22 THE COURT: Good morning, Ms. Sartoris.

23 MR. SPERTUS: Good morning, Your Honor. James
24 Spertus, Christa Wasserman, and John Hanusz on behalf of
25 Dr. Shih, who is present before the Court.

1 THE COURT: Good morning to all of you. Please be
2 seated.

3 Is there now an agreed-upon verdict form?

4 MR. SPERTUS: Yes, Your Honor.

5 MS. HEINZ: Yes, Your Honor.

6 THE COURT: Good job. Thanks for your work on
7 that.

8 Second, with respect to the most recent version of
9 the jury instructions that I sent out following yesterday's
10 hearing, other than the government's proposed change, is
11 there any other issue that is -- I mean, a new issue?

12 MR. SPERTUS: No new issue.

13 THE COURT: Is there an objection to the
14 government's proposed change to, I think it's, instruction
15 35?

16 MS. HEINZ: It's actually 34 and 35, Your Honor. I
17 apologize. We caught the needed change in instruction 35
18 this morning. So they're -- they're very similar changes,
19 and they are in both 34 and 35.

20 THE COURT: Any objection to those changes?

21 MR. SPERTUS: They've been described to me, and we
22 don't object to the goals of the changes. We have not yet
23 reviewed them.

24 THE COURT: Could you -- all right.

25 MR. SPERTUS: We'll do it during a break.

1 THE COURT: But the first step here is going to be
2 reading instructions.

3 MR. SPERTUS: Well, then, Your Honor --

4 THE COURT: Sorry to interrupt. We'll come back to
5 that in just a minute.

6 Other than the videos, is there any other issue?

7 MR. SPERTUS: No.

8 MS. HEINZ: None from the government, Your Honor.

9 THE COURT: Mr. Spertus, let me ask you this: With
10 respect to the videos, are you going to address that?

11 MR. SPERTUS: I am.

12 THE COURT: Well, what I'd like to know is the
13 following. With respect to -- just a minute. There are two.
14 Are these -- the videos to which I'm referring are
15 Exhibits 3560, 3562, 3557, 3558, 3561, and 3563.

16 The first two that I stated, 3560 and 3562, are
17 what has been referred to as Cree wafers. Now, let's start
18 there. On what -- to what are they relevant?

19 MR. SPERTUS: They are relevant because Cree
20 described its injury from the unauthorized access as making
21 the features of its PDK known. So the features of the PDK
22 are on YouTube.

23 THE COURT: I understand. To the extent -- with
24 respect to the four other videos -- which are not Cree
25 videos; you agree with that?

1 MR. SPERTUS: Yes.

2 THE COURT: For what are they being offered?

3 MR. SPERTUS: The exact same issue: The features
4 of the PDK are not secret, and Cree suffered no injury when
5 Dr. Shih accessed the PDK.

6 THE COURT: Okay. Why -- with respect to the four
7 non-Cree videos, why aren't they hearsay?

8 MR. SPERTUS: Because they're being offered simply
9 for the fact that PDK features are publicly known. If the
10 speaker is wrong, it's fine with us. We aren't offering them
11 to prove the words spoken by the speaker. Simply that the
12 features are public is the only evidentiary purpose for these
13 videos.

14 THE COURT: With respect to what you referred to as
15 the features in these non-Cree videos, what is the basis for
16 establishing the time when the time at which that Cree portal
17 was in -- was being used?

18 MR. SPERTUS: So the timing issue is not relevant
19 because Dr. Barner testified that since they offered the PDK,
20 they maintained secrecy of the features. And that is not
21 true. So there may have been some modifications to features
22 over time, but we are disproving Dr. Barner's testimony with
23 the videos.

24 THE COURT: Okay. Just a minute. With respect to
25 the speaker on the -- the speakers on these four videos --

1 so, for example, in 3557, Stuart Glen, is the discussion of
2 developing a GaN MMIC. Do you agree with that?

3 MR. SPERTUS: I believe so, yes.

4 THE COURT: And then there's a mention of using
5 what appears to be the PDK model for a particular design. Do
6 you agree with that?

7 MR. SPERTUS: Yes.

8 THE COURT: So why isn't that being offered for the
9 truth of this matter, that in designing a GaN MMIC, you can
10 use the Cree portal and here's how you do it?

11 MR. SPERTUS: So we are not trying to prove that
12 fact with the video. That's why. We -- if that's wrong.
13 Let's just make up a world inconsistent with Dr. Barner's
14 testimony, that you can't design a GaN MMIC on the PDK
15 portal.

16 The truth of that speaker's words is irrelevant to
17 the purpose for which they're being offered.

18 THE COURT: So you're offering these videos for the
19 limited purpose of establishing that through the internet and
20 on YouTube, a person can have access to a video that shows
21 the Cree portal.

22 MR. SPERTUS: The Cree PDK features, yes,
23 Your Honor.

24 THE COURT: Are the exhibits cumulative?

25 MR. SPERTUS: No.

1 THE COURT: Why not?

2 MR. SPERTUS: Because part of the evidentiary
3 purpose for these videos is to show that there are a lot of
4 them. So, you know, the fact that the defense couldn't
5 publish them is obviously going to -- it's not going to take
6 any juror time from this trial.

7 So we want to make the point that you can Google
8 the Cree PDK, and there are many, many YouTube videos showing
9 the features.

10 THE COURT: Exhibit 3563, do you have that one in
11 mind?

12 MR. SPERTUS: I believe so.

13 THE COURT: Describing certain products from
14 Agilent?

15 MR. SPERTUS: I believe so.

16 THE COURT: Does this show anything about the Cree
17 PDK?

18 MR. SPERTUS: I believe they're using the Cree PDK.

19 THE COURT: How do you know that?

20 MR. SPERTUS: I believe they show it in the video.

21 THE COURT: Thank you, Mr. Spertus.

22 Who is going to respond?

23 Ms. Heinz.

24 MS. HEINZ: Yes, Your Honor. First of all, the
25 government believes that the characterization of Dr. Barner's

1 testimony is incorrect. Dr. Barner did not say that making
2 certain features of the PDK known was the injury.

3 Dr. Barner freely admitted that Cree offers
4 marketing videos to show how their PDK works and how someone
5 can use a PDK to design something. What Dr. Barner testified
6 about was that Cree would never have allowed Kiet Mai or
7 MicroEx access to the PDK if it had known that it was not
8 going to comply. So -- so that's the first thing.

9 The second thing is that seeking to offer videos
10 which are not put out by Cree but are simply put out by third
11 parties is -- is not relevant here because there is -- there
12 is no showing that Cree allowed those videos to be made or
13 was complicit in getting those videos made or is somehow
14 responsible for getting those videos made.

15 In some cases it's not even clear from the video
16 that it is the Cree PDK that is being used or is being spoken
17 about.

18 THE COURT: In which exhibits do you think that's
19 the case?

20 MS. HEINZ: I think that that's true in 57 -- I'm
21 using the last numbers -- 57, 58, 60, and 63, because there
22 are only two videos that have been identified as, quote,
23 unquote, Cree videos, meaning that there is a Cree speaker
24 there and -- and who is a Cree employee talking about the
25 videos.

1 Secondly, the government believes the Court is
2 correct. This is hearsay, and it is not irrelevant that what
3 makes these relevant is if they are true. So one of the
4 things that has to be true in order to make these things
5 relevant is that actually the Cree PDK video is there and
6 that there are somehow showing in these videos features of
7 the PDK video that are not public, that would not be out
8 there.

9 The fact that they are simply showing how the PDK
10 portal -- it's not even an access to the portal issue.
11 They're simply showing how the design tool would work, and
12 that's all they're showing.

13 And so that part of it, if that is not true, if
14 somehow this is not actually the Cree PDK, then it's not
15 relevant.

16 THE COURT: All right. Well, okay. I understand.

17 MS. HEINZ: Finally, Your Honor, yes, these are
18 cumulative. Your Honor has found several things in this
19 trial from the government's point of view to be cumulative.
20 For example, we had to redact ITAR and military off of all of
21 the Honeywell -- a lot of the Honeywell things even though
22 our position is that the fact that the ITAR and military was
23 in several, many of the Honeywell training materials, that
24 that just reinforces the fact that the defendant knew about
25 those. And yet the Court found that to be cumulative.

1 The same thing is true here. Showing that there
2 are many videos out there on the internet that show these
3 things is also cumulative.

4 THE COURT: All right. Just a minute.

5 MS. HEINZ: Sorry, Your Honor. I have one more.

6 THE COURT: Go ahead.

7 MS. HEINZ: Finally, Your Honor, also injury to
8 Cree is not an element of the offense here. So showing
9 injury to Cree is not an element, is not a matter of proof.
10 So it's irrelevant. And entering this evidence is simply
11 prejudicial under 403.

12 THE COURT: Briefly, Mr. Spertus.

13 MR. SPERTUS: First of all, I think counsel is
14 referring to count 9, the unauthorized accessed count. I'm
15 referring to the fraud count where intent to deprive somebody
16 of property is an essential element.

17 THE COURT: There's a difference between mail fraud
18 and common law fraud in terms of the element; isn't there?

19 MR. SPERTUS: In the sense that you have to use
20 a --

21 THE COURT: No. I think there's a different
22 standard.

23 MR. SPERTUS: No. The element in the federal --
24 for federal wire fraud is an intent to cheat and lie to
25 deprive someone of a material thing.

1 THE COURT: I understand, but there's a distinction
2 I think in terms of the nature of the damages. But go ahead.

3 MR. SPERTUS: The second point that counsel said
4 was that the Court had ruled some defense evidence
5 cumulative, like the redactions out of Honeywell. That was
6 not the Court's ruling. That was a 403 ruling that ITAR and
7 military were irrelevant and prejudicial.

8 THE COURT: Thank you.

9 MR. SPERTUS: Not cumulative.

10 THE COURT: Thank you. Just a minute.

11 MR. SPERTUS: The last point is just that it
12 doesn't matter whether Cree ratified these videos. If
13 somebody steals the formula for Coke and puts it on the
14 internet, somebody is not committing a crime by making Coke.
15 So counsel just misstated the ratification issue.

16 Thank you.

17 THE COURT: Thank you.

18 (Pause in proceedings)

19 THE COURT: All right. Here's my view. With
20 respect to the Exhibits 3560 and 3562, I'll admit them
21 because they are Cree videos. It's not disputed that these
22 were Cree-produced videos. They constitute statements
23 therefore by a -- Cree is not a party here, but Cree is
24 presented as an element of the -- element of portions of the
25 case, including that it was -- evidence offered as to its

1 being misinformed and misled allegedly with respect to who
2 would have access to its portal through the arrangements with
3 Mr. Mai.

4 With respect to the -- with respect to 3561 of the
5 videos that were offered that are non-Cree videos, this is
6 the one -- this one I think most clearly refers to Cree.
7 There's a reference to Cree where that's an example given.

8 There's less certainty as to some of the others of
9 these non-Cree videos. So my view is that I will admit 3561
10 but not the others, and I admit for two reasons: one,
11 because it's cumulative; and, two, because, as I say, it's
12 less certain that the others are featuring the Cree portal.

13 **(Exhibit 3561 received.)**

14 THE COURT: These exhibits are admitted for a
15 limited purpose, which is that these are videos that are
16 available on the internet to a person searching the internet.

17 They're not admitted for the truth of any
18 statements made in them by any speaker, and I would so limit
19 that instruction to the jury.

20 I'll also note that with respect to -- and I don't
21 think, Mr. Spertus, you were presenting it for this reason --
22 but some of the statements that are being made by those on
23 the video about how to design a GaN wafer could be construed
24 as statements of an expert because this is not something that
25 is commonly known to a lay person.

1 Do you agree with that?

2 MR. SPERTUS: Yeah. We're not offering it for the
3 truth.

4 THE COURT: I understand, but it's also not being
5 offered as expert -- it's another reason that I'm not
6 permitting it for the truth of the matter asserted.

7 MR. SPERTUS: I agree.

8 THE COURT: And it's not offered as expert -- nor
9 is it offered as expert testimony, which is related to the
10 truth of the matter asserted. Okay.

11 If you could then review the one -- I think it's
12 one jury instruction that has been revised. It's number 36?

13 MS. HEINZ: It's 34 and 35, Your Honor.

14 THE COURT: Please let me know.

15 MR. SPERTUS: We have no objection, Your Honor.

16 THE COURT: All right. Thank you.

17 With respect to excusing juror eight, I think I'll
18 have juror eight come out separately because I don't want to
19 -- well, first, I think it's appropriate to explain to jury
20 eight that she's being excused and not just have her leave
21 without any understanding more than that.

22 Second, I think it's, given -- I just think that's
23 the best way to do this. Does anyone disagree on that?

24 MR. SPERTUS: We agree, Your Honor.

25 MS. HEINZ: We agree, Your Honor. We just think

1 it's important that juror not go back to the other jurors
2 after she's excused.

3 THE COURT: Okay. That's fine. Just a minute.

4 I'm going to have juror eight come out separately.
5 I don't want to discuss this in front of all the other
6 jurors. Second, once I finish, which won't take long, then
7 juror eight will be asked to -- will step out of the
8 courtroom and we'll bring in the other jurors.

9 I will ask that another person in our staff stay
10 with juror eight while Ms. Keifer gets the other jurors. And
11 then Ms. Keifer can take juror eight back to the jury room if
12 she has anything there, any personal things there that she
13 needs to retrieve.

14 Again, thank you for your work on the verdict form.
15 That saved us a lot of time. Well, it saved me a lot of
16 time. It didn't save you a lot of time.

17 Mr. Spertus, do you plan to show any of the three
18 videos or portions of them during your closing?

19 MR. SPERTUS: No, Your Honor.

20 THE COURT: Okay. Then I -- so these would be --

21 MR. SPERTUS: They were intended to be published
22 during the trial.

23 THE COURT: Okay. Yesterday -- the last time I
24 think this issue came up, it wasn't clear that you would or
25 wouldn't.

1 MR. SPERTUS: Yes. And what I'll do is reference
2 them. I'll take the exhibit numbers the Court --

3 THE COURT: Okay.

4 MR. SPERTUS: -- admitted. And I may or may not
5 but likely will reference them in my closing.

6 THE COURT: All right. The reason I ask is I
7 wanted to know whether I need to instruct the jury on the
8 limiting instruction. So if you're going to reference them,
9 I think I should.

10 MR. SPERTUS: I believe you should, yes.

11 THE COURT: All right. Anything else before we
12 bring out the jurors?

13 MS. HEINZ: Nothing from the government, Your
14 Honor.

15 THE COURT: Thanks. And your time estimate remains
16 two hours; is that correct?

17 MR. SPERTUS: Yes, Your Honor.

18 THE COURT: Okay. The government expects -- what's
19 the government's timing? Two hours plus?

20 MR. SHOBAKI: In that neighborhood, Your Honor. I
21 think that when we last spoke, we were looking at two to two
22 and a half hours tops. I believe that's what Mr. Spertus
23 said also.

24 MR. SPERTUS: I agree. If I run a few minutes
25 over -- I'm targeting two hours, but I may run a little over.

1 MR. SHOBAKI: Same thing, Your Honor, for both the
2 government's opening, close, and rebuttal.

3 THE COURT: As I said before, I urge both of you to
4 err on the side of less rather than more.

5 (Juror number eight enters the courtroom.)

6 THE JUROR: I'm scared.

7 THE COURT: Don't be. Don't be. Please be seated.

8 Good morning, Ms. D. How are you today, other than
9 you just said you were a little scared?

10 I wanted to talk to you briefly to let you know
11 that we're going to thank and excuse you as a juror in this
12 matter. At the conclusion of the proceedings last week,
13 there was a -- I'm told there was an interaction between you
14 and a person who had been a trial witness here where you
15 touched fists. And for that reason we're going to thank and
16 excuse you. We appreciate very much your --

17 THE JUROR: It's been a pleasure. I had a good
18 time.

19 THE COURT: Thank you for your service. Ms. Keifer
20 is going to take you to another person who is going to be
21 with you until we have the other jurors come in. Then -- do
22 you have things in the jury room? We'll take you back to the
23 jury room so you can retrieve your belongings.

24 THE JUROR: What am I going to do without all of
25 you guys? Especially you.

1 THE COURT: Thank you very much, Ms. D. Thank you
2 for your service.

3 (Juror number eight exits the courtroom.)

4 THE COURT: One last question. We had one
5 stipulation on timing of detention and release. Is there any
6 other stipulation that has not yet been read?

7 MR. SPERTUS: There is one more, and I will leave
8 Mr. Hughes to address that issue. But, yes, it's been
9 proposed to us. We agreed to it.

10 THE COURT: Do I have it in writing?

11 MR. HUGHES: Your Honor, I believe we sent it to
12 Ms. Keifer last night.

13 THE COURT: Do you have a copy of it?

14 MR. HUGHES: I do not have a copy of it on me right
15 now, Your Honor. I can get that relatively quickly.

16 THE COURT: Thank you.

17 MS. SARTORIS: Your Honor --

18 THE COURT: Yes.

19 MS. SARTORIS: -- I think there's one more. I
20 believe that defense counsel can --

21 THE COURT: Excuse me for interrupting you. Is
22 this the stipulation about the records of the IRS?

23 MR. HUGHES: Yes, Your Honor.

24 THE COURT: Okay. I have that.

25 MS. SARTORIS: I believe that the issues for this

1 morning, the stipulation regarding the release date was
2 already read during the course of the trial.

3 THE COURT: Yes.

4 MS. SARTORIS: The IRS stipulation that Your Honor
5 has and then also the -- the reference or the admonishment
6 that this Court described yesterday about there is some
7 evidence that can be considered.

8 THE COURT: Yes.

9 MS. SARTORIS: Thank you.

10 THE COURT: Thank you. Just a moment. Do you have
11 a copy of the revised instruction 35? Wait, I have it. What
12 has been submitted by the government today is a red line.
13 It's identical to what was sent out last night with the
14 exception of the addition of those two instructions; is that
15 right?

16 MS. HEINZ: That's correct, Your Honor.

17 THE COURT: Thank you.

18 THE CLERK: All rise.

19 (Open court - jury present)

20 THE COURT: Please be seated. All 12 jurors are
21 present. Ms. M, thank you -- first, thank you, ladies and
22 gentlemen for being back on time today as usual.

23 Ms. M, prior to now you've been serving as what we
24 called an alternate juror. As of this time you're no longer
25 an alternate. You're one of 12 jurors.

1 Ladies and gentlemen, I wanted to go over a few
2 matters with you. After that, I will then be reading
3 instructions to you. After I've read the instructions to
4 you, counsel will have an opportunity to present what are
5 called closing arguments. I'll get to that in a minute.

6 After that, I will read some closing instructions
7 to you. After that, you will begin your deliberations in
8 accordance with my instructions.

9 I think that the closing arguments are going to
10 take -- collectively will take several hours, but they will
11 conclude today.

12 Second, I wanted to let you know the following.
13 During the course of the trial, you have heard that there is
14 certain -- that certain evidence has been offered. As you
15 recall, sometimes objections are made to evidence, and
16 sometimes I rule sustaining an objection or overruling an
17 objection.

18 As you know, I also instructed you that whether I
19 sustain or overrule an objection has no bearing on your roles
20 here. Some decisions on the admissibility of evidence were
21 deferred, and we've been working on those.

22 I want to let you know at this time that certain
23 decisions have been made with respect to some of the
24 evidentiary matters where rulings were not finalized, and
25 there may be reference to that evidence in the course of the

1 closing arguments.

2 I just wanted to alert you to that so that the
3 evidence that's going to be discussed by counsel in closing
4 may include some things again as to which rulings were
5 deferred.

6 Second, in that regard I wanted to state that with
7 respect to the following three exhibits, 3560, 3561, and
8 3562, each of which is a video, these exhibits are being
9 admitted for a limited purpose. That limited purpose is that
10 these are available on the internet to a person searching the
11 internet.

12 These are not being offered as expert testimony or
13 expert statements, nor are they being offered for the truth
14 of any of the statements that you may hear if you listen to
15 these videos.

16 Finally, as I've also told you in the past, one of
17 the evidence in the case is -- can be exhibits, can be
18 testimony. It can also be facts to which the parties have
19 agreed.

20 I previously read you a stipulation as to certain
21 facts to which the parties here had agreed. I'm going to
22 read you a further stipulation as to certain facts to which
23 the parties have agreed:

24 The Internal Revenue Service has no record that
25 government witness Judy Chen filed a form 1040 U.S.

1 individual federal income tax return for either the year 2014
2 or the year 2015.

3 Is there anything counsel wish to confer about
4 before we proceed with the instructions?

5 MR. SPERTUS: No, Your Honor.

6 MS. HEINZ: No, Your Honor.

7 THE COURT: Thank you.

8 Before I start reading the instructions, ladies and
9 gentlemen, I want to let you know that copies of these
10 instructions will be provided to you for your use during your
11 deliberation. If there is any difference between what you
12 hear me read today -- or right now, excuse me -- and what you
13 may later read in a copy, it's what you read in that copy
14 that controls.

15 Members of the jury, now that you've heard all the
16 evidence, it is my duty to instruct you on the law that
17 applies to this case. A copy of these instructions will be
18 available in the jury room for you to consult.

19 It is your duty to weigh and to evaluate all the
20 evidence received in the case and in that process to decide
21 the facts. It is also your duty to apply the law as I give
22 it to you to the facts as find them whether you agree with
23 the law or not.

24 You must decide the case solely on the evidence and
25 the law. Do not allow personal likes or dislikes, sympathy,

1 prejudice, fear, or public opinion to influence you. You
2 should also not be influenced by any person's race, color,
3 religion, national ancestry or gender, sexual orientation,
4 profession, occupation, celebrity, economic circumstances, or
5 position in life or in the community. You will recall that
6 you took an oath promising to do so at the beginning of the
7 case.

8 You must follow all these instructions and not
9 single out some and ignore others. They are all important.
10 Please do not read into these instructions or into anything I
11 may have said or done any suggestion as to what verdict you
12 should return. That is a matter entirely up to you.

13 The second superseding indictment is not evidence.
14 The defendant has pleaded not guilty to the charges. The
15 defendant is presumed to be innocent unless and until the
16 government proves the defendant guilty beyond a reasonable
17 doubt.

18 In addition, the defendant does not have to testify
19 or present any evidence. The defendant does not have to
20 prove innocence. The government has the burden of proving
21 every element of the charges beyond a reasonable doubt.

22 A defendant in a criminal case has a constitutional
23 right not to testify. In arriving at your verdict, the law
24 prohibits you from considering in any manner that the
25 defendant did not testify.

1 Proof beyond a reasonable doubt is proof that
2 leaves you firmly convinced the defendant is guilty. It is
3 not required that the government prove guilt beyond all
4 possible doubt.

5 A reasonable doubt is a doubt based upon reason and
6 common sense and is not based purely on speculation. It may
7 arise from a careful and impartial consideration of all the
8 evidence or from a lack of evidence. If after a careful and
9 impartial consideration of all the evidence you are not
10 convinced beyond a reasonable doubt that the defendant is
11 guilty, it is your duty to find the defendant not guilty.

12 On the other hand, if after a careful and impartial
13 consideration of all the evidence you are convinced beyond a
14 reasonable doubt that the defendant is guilty, it is your
15 duty to find the defendant guilty.

16 The evidence you are to consider in deciding what
17 the facts are consists of: one, the sworn testimony of any
18 witness; two, the exhibits received in evidence; and three,
19 any facts to which the parties have agreed.

20 The parties here did agree to a fact as to the
21 dates in which the defendant was arrested and released on
22 bond. They also agreed that the defendant was the subscriber
23 and user of four e-mail accounts and that he was the owner
24 and end user of nine digital devices.

25 Further, they agreed that the Internal Revenue

1 Service has no record that the government witness, Judy Chen,
2 filed a form 1040 U.S. individual federal income tax return
3 for either the year 2014 or the year 2015.

4 In reaching your verdict, you may consider only the
5 testimony and exhibits received in evidence. The following
6 things are not evidence and you may not consider them in
7 deciding what the facts are:

8 One, questions, statements, objections, and
9 arguments by lawyers are not evidence. The lawyers are not
10 witnesses. Although you must consider a lawyer's questions
11 to understand the answers of a witness, the lawyer's
12 questions are not evidence. Similarly, what the lawyers have
13 said in their opening statements, will say in their closing
14 arguments, and at all other times is intended to help you
15 interpret the evidence, but it is not evidence. If the facts
16 as you remember them different from the way the lawyers state
17 them, your memory of them controls.

18 Two, any testimony that I have excluded, stricken,
19 or instructed you to disregard is not evidence. In addition,
20 some evidence was received only for a limited purpose. When
21 I've instructed you to consider evidence in a limited way,
22 you must do so.

23 Three, anything you may have seen or heard when the
24 court was not in session is not evidence. You are to decide
25 the case solely on the evidence received at the trial.

1 Evidence may be direct or circumstantial. Direct
2 evidence is direct proof of a fact such as testimony by a
3 witness about what that witness personally saw or heard or
4 did.

5 Circumstantial evidence is indirect evidence. That
6 is, it is proof of one or more facts from which you can find
7 another fact. You are to consider both direct and
8 circumstantial evidence. Either can be used to prove any
9 fact.

10 The law makes no distinction between the weight to
11 be given to either direct or circumstantial evidence. It is
12 for you to decide how much weight to give to any evidence.

13 In deciding the facts in this case, you may have to
14 decide which testimony to believe and which testimony not to
15 believe. You may believe everything a witness says or part
16 of it or none of it.

17 In considering the testimony of any witness, you
18 may take into account: one, the opportunity and ability of
19 the witness to see or hear or know the things testified to;
20 two, the witness's memory; three, the witness's manner while
21 testifying; four, the witness's interest in the outcome of
22 the case, if any; five, the witness's bias or prejudice, if
23 any; six, whether other evidence contradicted the witness's
24 testimony; seven, the reasonableness of the witness's
25 testimony in light of all the evidence; and eight, any other

1 factors that bear on believability.

2 Sometimes a witness may say something that is not
3 consistent with something else he or she said. Sometimes
4 different witnesses will give different versions of what
5 happened.

6 People often forget things or make mistakes in what
7 they remember. Also, two people may see the same event but
8 remember it differently. You may consider these differences,
9 but do not decide the testimony is untrue just because it
10 differs from other testimony.

11 However, if you decide that a witness has
12 deliberately testified untruthfully about something
13 important, you may choose not to believe anything that
14 witness said. On the other hand, if you think the witness
15 testified untruthfully about some things but told the truth
16 about others, you may accept the part you think is true and
17 ignore the rest.

18 The weight of the evidence as to a fact does not
19 necessarily depend on the number of witnesses who testify.
20 What is important is how believable the witnesses were and
21 how much weight you think their testimony deserves.

22 You are here only to determine whether the
23 defendant is guilty or not guilty of the charges in the
24 second superseding indictment. The defendant is not on trial
25 for any conduct or offense not charged in the second

1 superseding indictment.

2 A separate crime is charged against the defendant
3 in each count. You must decide each count separately. Your
4 verdict on one count should not control your verdict on any
5 other count.

6 You have heard testimony of a witness who testified
7 in a language other than English. Witnesses who do not speak
8 English or are more proficient in another language testified
9 through an official interpreter.

10 Although some of you may know the non-English
11 language spoken by the witness, it is important that all
12 jurors consider the same evidence. Therefore, you must
13 accept the interpreter's translation of the witness's
14 testimony. You must disregard any different meaning.

15 You must not make any assumptions about a witness
16 or party based solely on the fact that an interpreter was
17 used.

18 You have seen documents in the Chinese language.
19 Translations of these documents have been admitted into
20 evidence. The government and, for some documents, the
21 defendant have introduced English-language translations of
22 these Chinese-language documents.

23 When both the government and the defendant have
24 introduced English-language translations of a document, the
25 accuracy of the translation is disputed in this case.

1 Whether a translation is an accurate translation in whole or
2 in part is for you to decide.

3 In considering whether a translation accurately
4 describes the language in a document, you should consider the
5 testimony presented to you regarding how and by whom the
6 translation was made.

7 You may consider the knowledge, training, and
8 experience of the translator as well as the nature of the
9 document and the reasonableness of the translation in light
10 of all the evidence in the case.

11 Although some of you may know the Chinese language,
12 it is important that all jurors consider the same evidence.
13 Therefore, you must not rely in any way on any knowledge you
14 may have of the Chinese language. Your consideration of the
15 translations must be based in the evidence of the case.

16 From time to time during the trial, it became
17 necessary for me to take up legal matters with the attorneys
18 privately either by having a conference at the bench when the
19 jury was present in the courtroom or by calling a recess.
20 Please understand that while you were waiting, we were
21 working.

22 The purpose of these conferences was not to keep
23 relevant information from you but to decide how certain
24 evidence was to be treated under the rules of evidence and to
25 avoid confusion and error. Of course, we have done what we

1 could to keep the number and length of these conferences to a
2 minimum.

3 I did not always grant an attorney's request for a
4 conference. Do not consider my granting or denying a request
5 for a conference as any indication of my opinion of the case
6 or what your verdict should be.

7 The second superseding indictment charges that the
8 offenses alleged were committed, quote, on or about, close
9 quote, certain dates. Although it is necessary for the
10 government to prove beyond a reasonable doubt that the
11 offenses were committed on a date reasonably near the dates
12 alleged in the second superseding indictment, it is not
13 necessary for the government to prove that the offense was
14 committed precisely on the date charged.

15 You have heard testimony that the defendant made a
16 statement. It is for you to decide, one, whether the
17 defendant made the statement; and, two, if so, how much
18 weight to give to it.

19 In making those decisions, you should consider all
20 the evidence about the statement, including the circumstances
21 under which the defendant may have made it.

22 You've heard testimony from Kiet Ahn Mai, a witness
23 who, A, pleaded guilty to a crime; B, received a promise from
24 the government not to prosecute him further criminally for
25 violations of federal law arising out of his conduct as

1 alleged in the second superseding indictment; and C, hopes to
2 receive a recommendation of leniency from the government at
3 sentencing.

4 Mr. Mai's guilty plea is not evidence against the
5 defendant, and you may consider it only in determining this
6 witness's believability. For these reasons, in evaluating
7 the testimony of Kiet Ahn Mai, you should consider the extent
8 to which or whether his testimony may have been influenced by
9 any of these factors.

10 In addition, you should examine the testimony of
11 Kiet Ahn Mai with greater caution than that of other
12 witnesses.

13 You've heard testimony from certain witnesses who
14 testified as experts to opinions and the reasons for their
15 opinions. This opinion testimony is allowed because of the
16 education or experience of this witness.

17 Such opinion testimony should be judged like any
18 other testimony. You may accept it or reject it and give it
19 as much weight as you think it deserves considering the
20 witness's education and experience, the reasons given for the
21 opinion, and all the other evidence in the case.

22 You have heard testimony from certain witnesses who
23 testified to both facts and opinions and the reasons for
24 their opinions. Fact testimony is based on what the witness
25 saw, heard, or did. Opinion testimony is based on the

1 education or experience of the witness.

2 As to the testimony about facts, it is your job to
3 decide which testimony to believe and which testimony not to
4 believe. You may believe everything a witness says or part
5 of it or none of it. Take into account the factors discussed
6 earlier in these instructions that were provided to assist
7 you in weighing the credibility of witnesses.

8 As to the testimony about the witness's opinions,
9 this opinion testimony is allowed because of the education or
10 experience of this witness. Opinion testimony should be
11 judged like any other testimony. You may accept all of it,
12 part of it, or none of it. You should give it as much weight
13 as you think it deserves considering the witness's education
14 and experience, the reasons given for the opinion, and all
15 the other evidence in the case.

16 During the trial certain charts and summaries were
17 shown to you in order to help explain the evidence in this
18 case. These charts and summaries were not admitted into
19 evidence and will not go into the jury room with you. They
20 are not themselves evidence or proof of facts.

21 If they do not correctly reflect the facts or
22 figures shown by the evidence in the case, you should
23 disregard these charts and summaries and determine the facts
24 from the underlying evidence.

25 Certain charts and summaries have been admitted

1 into evidence. Charts and summaries are only as good as the
2 underlying supporting material. You should therefore give
3 them only such weight as you think the underlying material
4 deserves.

5 Defendant Yi-Chi Shih is charged in count 1 of the
6 second superseding indictment with knowingly and willfully
7 conspiring to export items from the United States to the
8 People's Republic of China and to Chengdu GaStone Technology
9 Company, Limited, a/k/a Chengdu Jiashi Technology Company,
10 Limited, quote, CGTC, close quote, without having first
11 obtained the required licenses from the United States
12 Department of Commerce and without filing electronic export
13 information to the automated export system, in violation of
14 the International Emergency Economic Powers Act, referred to
15 as, quote, IEEPA, close quote, and related export
16 administration regulations.

17 Defendant Yi-Chi Shih is charged in count 2 of the
18 second superseding indictment with knowingly and willfully
19 causing the export of items from the United States to the
20 People's Republic of China without having first obtained from
21 the United States Department of Commerce required licenses,
22 thereby violating IEEPA and the related export administration
23 regulations.

24 IEEPA makes it unlawful for any person willfully to
25 violate, attempt to violate, conspire to violate, or cause a

1 violation of certain regulations including the export
2 administration regulations.

3 The export administration regulations prohibit the
4 export to specified countries of certain items unless a
5 license is first obtained from the Department of Commerce.

6 The export administration regulations also contain
7 specific license requirements for the export of specified
8 items to certain foreign persons, including businesses and
9 organizations that are on the Department of Commerce's,
10 quote, entity list, close quote.

11 Federal laws, including the export administration
12 regulations, also require the filing of electronic export
13 information through the automated export system for the
14 export of certain commodities valued over \$2,500 to the
15 People's Republic of China.

16 The electronic export information is required to
17 contain, among other things, the names and addresses of the
18 parties to the transaction and the description of the
19 quantity and value of the items exported. However, exports
20 made in an intangible form such as presentation slides do not
21 require the filing of electronic export information.

22 The term, quote, export, close quote, means an
23 actual shipment or transmission of items out of the
24 United States. The term, quote, export-controlled items,
25 close quote, means items for which the Department of Commerce

1 requires that a license be obtained before the items can
2 lawfully be exported from the United States to certain
3 countries, including the People's Republic of China.

4 The export administration regulations also provide
5 for certain exclusions and exceptions to the requirements to
6 obtain a license and to file electronic export information.
7 These are addressed in instructions 29 and 30.

8 For the defendant Yi-Chi Shih to be found guilty of
9 count 1, which charges the defendant with conspiring to
10 export items from the United States to the People's Republic
11 of China and to Chengdu GaStone Technology Company, Limited,
12 without having first obtained the required licenses from the
13 United States Department of Commerce and without filing
14 required electronic export information through the automated
15 export system, the government must prove each of the
16 following elements beyond a reasonable doubt.

17 First, beginning on an unknown date but not later
18 than January 2006 and continuing through at least in or
19 around January 2016, there was an agreement between two or
20 more persons to knowingly and willfully do at least one of
21 the following:

22 A, export an item from the United States to the
23 People's Republic of China without having first obtained from
24 the Department of Commerce a license required by the export
25 administration regulations;

1 B, export an item after August 1, 2014, from the
2 United States to Chengdu GaStone Technology Company, Limited,
3 without having first obtained from the Department of Commerce
4 a license required by the export administration regulations;

5 C, export an item from the United States to the
6 People's Republic of China without filing electronic export
7 information through the automated export system if required
8 by the export administration regulations;

9 D, export an item after August 1, 2014, from the
10 United States to Chengdu GaStone Technology Company, Limited,
11 without filing electronic export information through the
12 automated export system if required by the export
13 administration regulations.

14 Second, the defendant became a member of the
15 conspiracy knowing of at least one of its objects and
16 intending to help accomplish it.

17 A conspiracy is a kind of criminal partnership, an
18 agreement of two or more persons to commit one or more
19 crimes. The crime of conspiracy is the agreement to do
20 something unlawful. It does not matter whether the crime
21 agreed upon was committed.

22 For a conspiracy to have existed, it is not
23 necessary that the conspirators made a formal agreement or
24 that they agreed on every detail of the conspiracy. It is
25 not enough, however, that they simply met, discussed matters

1 of common interest, acted in similar ways, or perhaps helped
2 one another.

3 You must find that there was a plan to commit the
4 crime alleged in count 1 of the second superseding indictment
5 as an object of the conspiracy with all of you agreeing as to
6 each particular crime which the conspirators agreed to
7 commit.

8 One becomes a member of a conspiracy by willfully
9 participating in the unlawful plan with the intent to advance
10 or further some object or purpose of the conspiracy even
11 though the person does not have full knowledge of all the
12 details of the conspiracy.

13 Furthermore, one who willfully joins an existing
14 conspiracy is as responsible for it as the originators. On
15 the other hand, one who has no knowledge of a conspiracy but
16 happens to act in a way which furthers some object or purpose
17 of the conspiracy does not thereby become a conspirator.

18 Similarly, a person does not become a conspirator
19 merely by associating with one or more persons who are
20 conspirators nor merely by knowing that a conspiracy exists.

21 A conspiracy may continue for a long period of time
22 and may include the performance of many transactions. It is
23 not necessary that all members of the conspiracy join it at
24 the same time.

25 One may become a member of a conspiracy without

1 full knowledge of all the details of the unlawful scheme or
2 the names, identities, or locations of all the members.

3 Even though a defendant did not directly conspire
4 with other conspirators in the overall scheme, the defendant
5 has in effect agreed to participate in the conspiracy if the
6 government proves each of the following beyond a reasonable
7 doubt:

8 One, the defendant directly conspired with one or
9 more co-conspirators to carry out at least one of the objects
10 of the conspiracy.

11 Two, the defendant knew or had reason to know that
12 other conspirators were involved with those with whom the
13 defendant directly conspired.

14 Three, the defendant had reason to believe that
15 whatever benefits the defendant might get from the conspiracy
16 were probably dependent on the success of the entire venture.

17 It is not a defense that a person's participation
18 in a conspiracy was minor for a short period of time.

19 Defendant Yi-Chi Shih is charged in count 2 of the
20 second superseding indictment with knowingly and willfully
21 causing to be exported on or about December 30, 2013, to
22 January 2, 2014, from the United States to the People's
23 Republic of China export controlled items, namely, monolithic
24 microwave integrated circuit, MMIC, amplifiers without having
25 first obtained from the Department of Commerce the required

1 license, thereby violating the International Emergency
2 Economic Powers Act and the related export administration
3 regulations.

4 For the defendant to be found guilty of count 2,
5 the government must prove each of the following elements
6 beyond a reasonable doubt:

7 First, the defendant caused to be exported an
8 export controlled item, namely, a monolithic microwave
9 integrated circuit, MMIC, amplifier from the United States to
10 the People's Republic of China.

11 Second, a license was required under the export
12 administration regulations to export the MMIC.

13 Third, the defendant failed to obtain from the
14 Department of Commerce the required license before causing
15 the MMIC to be exported.

16 Fourth, the defendant acted knowingly and
17 willfully.

18 A defendant may be found guilty of knowingly and
19 willfully causing to be exported from the United States to
20 the People's Republic of China an export controlled item
21 without having first obtained a required license from the
22 Department of Commerce even if the defendant personally did
23 not commit the act or acts constituting the export of the
24 item.

25 To prove the defendant caused an export controlled

1 item, namely, a monolithic microwave integrated circuit,
2 MMIC, amplifier to be exported from the United States to the
3 People's Republic of China, quote, PRC, close quote, the
4 government must prove beyond a reasonable doubt that the
5 defendant put in motion or caused the MMIC to be exported
6 from the United States to the PRC.

7 The government is not required to prove precisely
8 who exported the MMIC so long as it proves beyond a
9 reasonable doubt that the defendant caused the export of the
10 MMIC.

11 An act is done knowingly if the defendant is aware
12 of the act and does not act through ignorance, mistake, or
13 accident. You may consider evidence of the defendant's
14 words, acts, or omissions along with all the other evidence
15 in deciding whether the defendant acted knowingly.

16 For purposes of counts 1 and 2, a defendant acts
17 willfully if he acts voluntarily and intentionally with
18 knowledge that his conduct is unlawful. Here that means that
19 the defendant knew that a license was required for the export
20 of the items at issue and intended to violate the law by
21 conspiring to export them (count 1) and/or by causing them to
22 be exported (count 2) without such a license.

23 It is not necessary for the government to prove
24 that the defendant had read, was aware of, or it consulted
25 the specific regulations governing his activities.

1 To determine whether the export administration
2 regulations require a license in the filing of electronic
3 export information with respect to an item, it is necessary
4 to determine both, one, the destination to which the item is
5 exported, and, two, whether the item is classified with an
6 export controlled classification number, quote, ECCN, close
7 quote, that requires a license for exports to that
8 destination.

9 If you determine that the defendant intended that
10 the final destination for an item was not one of the
11 destinations described in the instructions for the applicable
12 count (instructions 22 and 25) you must find the defendant
13 not guilty of that count.

14 However, if you find that the defendant intended
15 that an item would arrive at one of the destinations
16 described in the instructions for the applicable count
17 (instructions 22 and 25) after transiting through a different
18 country or countries, the export is deemed to be to the
19 ultimate intended destination.

20 In considering what the defendant intended in this
21 regard, you may consider that an item may be exported to Hong
22 Kong without a license if it is to remain there, its value is
23 less than \$3,000, and its intended use is for civil
24 telecommunications.

25 Certain evidence has been presented that items

1 involved in this case were classified with ECCNs in the 3A001
2 category. In determining whether the 3A001 category applies,
3 you should consider the following matters:

4 One, the 3A001 category applies to, quote,
5 commodities, close quote, but not to, quote, technology,
6 close quote. Commodities are articles, materials, or
7 supplies other than technology or software.

8 Technology is specific information necessary for
9 the development, production, or use of a product. This
10 includes such information that is publicly available.

11 Two, the 3A001 category does not apply to MMICs
12 that are, quote, specially designed, close quote, for a
13 telecommunications application. An item is, quote, specially
14 designed, close quote, for a telecommunications application
15 if as a result of design research analysis, testing a
16 prototype, or similar type steps involved in developing a
17 product, it is properties peculiarly designed to achieve or
18 exceed certain performance levels, characteristics, or
19 functions necessary for telecommunications purposes.

20 The export administration regulations do not
21 require a license for certain, quote, temporary exports,
22 close quote. To qualify as a, quote, temporary export, the
23 item must be, one, exported only for inspection, testing,
24 calibration, or repair; and two, within one year of the date
25 of export the item is either, A, consumed or destroyed in the

1 normal course of temporary use abroad or, B, returned to the
2 United States.

3 Further, an item is not a, quote, temporary export,
4 close quote, if the exporter has prior knowledge that the
5 item will stay abroad for more than one year.

6 Three, a purchase order to acquire the item from a
7 source within the United States must not have been received
8 by that source before the item is shipped.

9 In considering whether such an order was received,
10 you may consider the evidence presented as to what person or
11 entity actually caused the purchase order to be made.

12 Defendant Yi-Chi Shih is charged in counts 3
13 through 6 of the second superseding indictment with mail
14 fraud in violation of Section 1341 of Title 18 of the United
15 States Code.

16 For the defendant to be found guilty on counts 3
17 through 6, the government must prove each of the following
18 elements beyond a reasonable doubt:

19 First, the defendant knowingly participated in a
20 scheme or plan to defraud Cree or a scheme or plan for
21 obtaining money or property from Cree by means of false or
22 fraudulent pretenses, representations, or promises.
23 Deceitful statements or half truths may constitute false or
24 fraudulent representations.

25 Second, the statements made as part of the scheme

1 are material; that is, they had a natural tendency to
2 influence or capable of influencing a person to part with
3 money or property.

4 Third, the defendant acted with the intent to
5 defraud; that is, the intent to deceive or cheat.

6 Fourth, the defendant used or caused to be used the
7 mails to carry out or attempt to carry out an essential part
8 of the scheme.

9 In determining whether a scheme to defraud exists,
10 you may consider not only the defendant's words and
11 statements but also the circumstances in which they are used
12 as a whole. You need not unanimously agree that a specific
13 material false statement was made.

14 A mailing is caused when one knows that the mails
15 will be used in the ordinary course of business or when one
16 can reasonably foresee such use. It does not matter whether
17 the material mail was itself false or deceptive so long as
18 the mail was used as part of the scheme. Nor does it matter
19 whether the scheme or plan was successful or that any money
20 or property was obtained.

21 If you decide that the defendant was a member of a
22 scheme to defraud and that the defendant had the intent to
23 defraud, the defendant may be responsible for other
24 co-schemers' actions during the course of and in furtherance
25 of the scheme even if the defendant did not know what they

1 said or did.

2 For the defendant to be guilty of an offense
3 committed by a co-schemer in furtherance of the scheme, the
4 offense must be one that the defendant could reasonably
5 foresee as a necessary and natural consequence of the scheme
6 to defraud.

7 Defendant Yi-Chi Shih is charged in counts 7 and 8
8 of the second superseding indictment with wire fraud in
9 violation of Section 1343 of Title 18 of the United States
10 Code.

11 In order for the defendant to be found guilty on
12 counts 7 and 8, the government must prove each of the
13 following elements beyond a reasonable doubt:

14 First, the defendant knowingly participated in a
15 scheme or plan to defraud Cree or a scheme or plan for
16 obtaining money or property from Cree by means of false or
17 fraudulent pretenses, representations, or promises.
18 Deceitful statements or half truths may constitute false or
19 fraudulent representations.

20 Second, the statements made as part of the scheme
21 were material; that is, they had a natural tendency to
22 influence or were capable of influencing a person to part
23 with money or property.

24 Third, the defendant acted with the intent to
25 defraud; that is, the intent to deceive or cheat.

1 Fourth, the defendant used or caused to be used an
2 interstate wire communication to carry out or attempt to
3 carry out an essential part of the scheme.

4 In determining whether a scheme to defraud exists,
5 you may consider not only the defendant's words and
6 statements but also the circumstances in which they are used
7 as a whole. A wire communication involves the use of wire,
8 radio, or television communication in interstate or foreign
9 commerce. You need not unanimously agree that a specific
10 material false statement was made.

11 A wiring is caused when one knows that a wire will
12 be used in the ordinary course of business or when one can
13 reasonably foresee such use. It need not have been
14 reasonably foreseeable to the defendant that the wire
15 communication would be interstate in nature.

16 Rather, it must have been reasonably foreseeable to
17 the defendant that some wire communication would occur in
18 furtherance of the scheme and an interstate wire
19 communication must have actually occurred in furtherance of
20 the scheme.

21 Defendant Yi-Chi Shih is charged in count 9 of the
22 second superseding indictment with conspiring to
23 intentionally access without authorization a protected
24 computer and thereby obtain information in violation of
25 Section 1030(a)(2)(C), (c)(2)(B)(i)-(iii) of Title 18 of the

1 United States Code.

2 In order for the defendant to be found guilty of
3 that charge, the government must prove each of the following
4 elements beyond a reasonable doubt:

5 First, beginning on or about an unknown date but no
6 later than February 15, 2013, and ending on or about an
7 unknown date but no earlier than October 19, 2015, there was
8 an agreement between two or more persons to intentionally
9 access without authorization a protected computer and thereby
10 obtain information in furtherance of a criminal act in
11 violation of United States laws, namely, the International
12 Emergency Economic Powers Act, mail fraud, or wire fraud, in
13 violation of Section 1030(a)(2)(C), (c)(2)(B)(ii) of Title 18
14 of the United States Code.

15 Second, the defendant became a member of the
16 conspiracy knowing of at least one of its objects and
17 intending to help accomplish it.

18 Third, one of the members of the conspiracy
19 performed at least one overt act for the purpose of carrying
20 out the conspiracy.

21 A conspiracy is a kind of criminal partnership, an
22 agreement of two or more persons to commit one or more
23 crimes. The crime of conspiracy is the agreement to do
24 something unlawful. It does not matter whether the crime
25 agreed upon was committed.

1 For a conspiracy to have existed, it is not
2 necessary that the conspirators made a formal agreement or
3 that they agreed on every detail of the conspiracy. It is
4 not enough, however, that they simply met, discussed matters
5 of common interest, acted in similar ways, or perhaps helped
6 one another.

7 You must find that there was a plan to
8 intentionally access without authorization a protected
9 computer and thereby obtain information in violation of
10 Section 1030(a)(2)(C), (c)(2)(B)(i)-(iii) of Title 18 of the
11 United States Code.

12 One becomes a member of a conspiracy by willfully
13 participating in the unlawful plan with the intent to advance
14 or further some object or purpose of the conspiracy even
15 though the person does not have full knowledge of all the
16 details of the conspiracy.

17 Furthermore, one who willfully joins an existing
18 conspiracy is as responsible for it as the originators. On
19 the other hand, one who has no knowledge of a conspiracy but
20 happens to act in a way which furthers some object or purpose
21 of the conspiracy does not thereby become a conspirator.

22 Similarly, a person does not become a conspirator
23 merely by associating with one or more persons who are
24 conspirators, nor merely by knowing that a conspiracy exists.

25 An overt act does not itself have to be unlawful.

1 A lawful act may be an element of a conspiracy if it was done
2 for the purpose of carrying out the conspiracy. The
3 government is not required to prove that the defendant
4 personally did one of the overt acts.

5 As I just told you, defendant Yi-Chi Shih is
6 charged in count 9 with conspiring to intentionally access
7 without authorization a protected computer and thereby obtain
8 information in violation of Section 1030(a)(2)(C),
9 (c)(2)(B)(i)-(iii) of Title 18 of the United States Code.

10 In order for the defendant to be found guilty of
11 that charge, the government must prove each of the following
12 elements beyond a reasonable doubt:

13 First, the defendant intentionally accessed without
14 authorization a computer.

15 Second, by accessing without authorization a
16 computer, the defendant obtained information from a computer
17 that was used in or affected commerce or communication
18 between one state and another state.

19 Third, the information was obtained in furtherance
20 of a criminal act in violation of the United States laws,
21 namely, the International Emergency Economic Powers Act, mail
22 fraud, or wire fraud, in violation of Section 1030(a)(2)(C),
23 (c)(2)(B)(ii).

24 Whether the defendant was authorized to access the
25 computer in this case depends on the actions taken by Cree to

1 grant or deny permission to defendant to use the computer. A
2 person uses a computer, quote, without authorization, close
3 quote, when the person has not received permission from Cree
4 to use the computer for any purpose (such as when a hacker
5 accesses the computer without any permission), or when Cree
6 has rescinded permission to use the computer and the person
7 uses the computer anyway.

8 Defendant Yi-Chi Shih is charged in count 10 of the
9 second superseding indictment with aiding and abetting the
10 transport of funds to promote unlawful activity in violation
11 of Section 1956(a)(2)(A) of Title 18 of the United States
12 Code.

13 In order for the defendant to be found guilty of
14 that charge, the government must prove each of the following
15 elements beyond a reasonable doubt:

16 First, the defendant aided and abetted the
17 transport of money to a place in the United States from or
18 through a place outside the United States.

19 Second, the defendant acted with the intent to
20 promote the carrying on of fraud and related activity in
21 connection with computers or mail fraud or wire fraud or
22 violations of the International Emergency Economic Powers
23 Act.

24 Aiding and abetting is defined in instruction 37.

25 A defendant may be found guilty of transporting

1 funds to promote unlawful activity in violation of
2 Section 1956(a) (2) (A) of Title 18 of the United States Code
3 even if the defendant personally did not commit the act or
4 acts constituting the crime but aided and abetted in its
5 commission.

6 To, quote, aid and abet, close quote, means
7 intentionally to help someone else commit a crime.

8 To prove a defendant guilty of transporting funds
9 to promote unlawful activity by aiding and abetting, the
10 government must prove each of the following beyond a
11 reasonable doubt:

12 First, someone else committed the crime of
13 transporting funds to promote unlawful activity.

14 Second, the defendant aided, counseled, commanded,
15 induced, or procured that person with respect to at least one
16 element of the crime of transporting funds to promote
17 unlawful activity.

18 Third, the defendant acted with the intent to
19 facilitate the crime of transporting funds to promote
20 unlawful activity.

21 Fourth, the defendant acted before the crime was
22 completed. It is not enough that the defendant merely
23 associated with the person committing the crime or
24 unknowingly or unintentionally did things that were helpful
25 to that person or was present at the scene of the crime.

1 The evidence must show beyond a reasonable doubt
2 that the defendant acted with the knowledge and intention of
3 helping that person commit the crime of transporting funds to
4 promote unlawful activity.

5 A defendant acts with the intent to facilitate the
6 crime when the defendant actively participates in a criminal
7 venture with advanced knowledge of the crime.

8 The government is not required to prove precisely
9 which defendant actually committed the crime and which
10 defendant aided and abetted.

11 Defendant Yi-Chi Shih is charged in count 11 of the
12 second superseding indictment with knowingly and willfully
13 making a false statement in a matter within the jurisdiction
14 of a governmental agency or department in violation of
15 Section 1001(a) (2) of Title 18 of the United States Code.

16 The false statements defendant is charged with
17 making are: No Cree wafers, also known as MMIC amplifiers,
18 went to China.

19 No Cree B wafers, also known as MMIC amplifiers,
20 went to Hong Kong.

21 Defendant Shih was not working on GaN in China.

22 In order for the defendant to be found guilty of
23 the charge in count 11, the government must prove each of the
24 following elements beyond a reasonable doubt:

25 First, the defendant made a false statement with

1 all of you agreeing as to which statement was false and
2 material.

3 Second, the statement was made in a matter within
4 the jurisdiction of the Federal Bureau of Investigation,
5 quote, FBI, close quote.

6 Third, the defendant acted willfully; that is, the
7 defendant acted deliberately, i.e., intentionally and with
8 knowledge both that the statement was untrue and that his
9 conduct was unlawful.

10 Fourth, the statement was material to the
11 activities or decisions of the FBI; that is, it had a natural
12 tendency to influence or was capable of influencing the
13 agency's decisions or activities.

14 Defendant Yi-Chi Shih is charged in counts 12
15 through 14 of the second superseding indictment with filing a
16 false tax return in violation of Section 72061 of Title 26 of
17 the United States Code.

18 In order for defendant to be found guilty of those
19 charges, the government must prove each of the following
20 elements beyond a reasonable doubt:

21 First, the defendant signed and filed a tax return
22 for the year 2011, count 12; the year 2012, count 13; and the
23 year 2013, count 14, that he knew contained incorrect
24 information as to a material matter, i.e., the amount of
25 total income earned by the defendant during the 2011 and

1 2012 calendar years and the amount of ordinary dividends
2 earned by the defendant during the 2000 [sic] calendar year.

3 Second, each tax return contained a written
4 declaration that it was being signed subject to the penalties
5 of perjury.

6 Third, in filing each false tax return, the
7 defendant acted willfully.

8 A matter is material if it had a natural tendency
9 to influence or was capable of influencing the decisions or
10 activities of the Internal Revenue Service.

11 In order to prove that the defendant acted
12 willfully, the government must prove beyond a reasonable
13 doubt that the defendant knew federal tax law imposed a duty
14 on him, and the defendant intentionally and voluntarily
15 violated that duty.

16 A defendant who acts on a good-faith
17 misunderstanding as to the requirements of the law does not
18 act willfully even if his understanding of the law is wrong
19 or unreasonable.

20 Nevertheless, merely disagreeing with the law does
21 not constitute a good-faith misunderstanding of the law
22 because all persons have a duty to obey the law whether or
23 not they agree with it.

24 Thus in order to prove that the defendant acted
25 willfully, the government must prove beyond a reasonable

1 doubt that he did not have a good-faith belief that he was
2 complying with the law.

3 You have heard evidence that the federal income tax
4 returns at issue in counts 13 and 14 of the second
5 superseding indictment were filed electronically with the
6 Internal Revenue Service.

7 In the case of an electronically filed return, an
8 electronic signature made in accordance guidance published by
9 the Internal Revenue Service is for all purposes the same as
10 a written signature on a paper tax return.

11 For individual federal income tax returns filed for
12 the taxable years 2012 and 2013, applicable IRS guidance
13 permitted third-party tax return preparers to electronically
14 file returns on behalf of their client upon securing client
15 authorization via a signed and dated IRS form 8879.

16 Defendant Yi-Chi Shih is charged in counts 15
17 through 18 of the second superseding indictment with
18 knowingly and willfully concealing a material fact from the
19 United States Department of Treasury via trick, scheme, or
20 device in violation of Title 18 of the United States Code
21 Section 1001(a)(1).

22 Count 15 charges that on or about May 6, 2014,
23 defendant submitted to the Department of the Treasury a
24 report of foreign bank and financial accounts, FinCEN form
25 114, commonly referred to as, quote, FBAR, close quote, that

1 concealed that during calendar year 2013 he had a financial
2 interest in and a signature authority over bank, securities,
3 and other financial accounts at Standard Chartered Bank (Hong
4 Kong), Limited, in Hong Kong with an aggregate value in
5 excess of \$10,000; and that during calendar year 2013 he had
6 a financial interest in and signature authority over bank,
7 securities, and other financial accounts at the Hong Kong
8 branch of Coutts & Company, Limited, in Hong Kong with an
9 aggregate value in excess of \$10,000.

10 Count 16 charges that on or about June 18, 2015,
11 defendant submitted to the Department of Treasury an FBAR
12 that concealed that during calendar year 2014 he had a
13 financial interest in and signature authority over bank,
14 securities, and other financial accounts at Standard
15 Chartered Bank Hong Kong, Limited, in Hong Kong with an
16 aggregate value in excess of \$10,000; and that during
17 calendar year 2014, he had a financial interest in and
18 signature authority over bank, securities, and other
19 financial accounts at the Hong Kong branch of Coutts &
20 Company, Limited, in Hong Kong with an aggregate value in
21 excess of \$10,000.

22 Count 17 charges that on or about April 9, 2016,
23 defendant submitted to the Department of Treasury an FBAR
24 that concealed that during calendar year 2015 he had a
25 financial interest in and signature authority over bank,

1 securities, and other financial accounts at Standard
2 Chartered Bank Hong Kong, Limited, in Hong Kong with an
3 aggregate value in excess of \$10,000.

4 Count 18 charges that on or about April 12, 2017,
5 defendant submitted to the Department of Treasury an FBAR
6 that concealed that during calendar year 2016 he had a
7 financial interest in and signature authority over bank,
8 securities, and other financial accounts at Standard
9 Chartered Bank Hong Kong, Limited, in Hong Kong with an
10 aggregate value in excess of \$10,000.

11 In order for the defendant to be found guilty of
12 these charges, the government must prove each of the
13 following elements beyond a reasonable doubt:

14 First, defendant Yi-Chi Shih knowingly concealed by
15 trick, scheme, or device in his FBAR for calendar year 2013,
16 count 15; calendar year 2014, count 16; calendar year 2015,
17 count 17; and calendar year 2016, count 18, a fact which he
18 had a legal duty to report.

19 You must all agree as to the specific act of
20 concealment undertaken by defendant Yi-Chi Shih and the fact
21 concealed.

22 Second, the fact concealed was in a matter within
23 the jurisdiction of the Department of Treasury.

24 Third, the defendant, Yi-Chi Shih, acted willfully;
25 that is, defendant Yi-Chi Shih acted deliberately, i.e.,

1 intentionally and with knowledge both that the fact had been
2 concealed and that his conduct was unlawful.

3 Fourth, the fact concealed was material to the
4 activities or decisions of the Department of the Treasury;
5 that is, it had a natural tendency to influence or was
6 capable of influencing the agency's decisions or activities.

7 The phrase, quote, concealed a fact by any trick,
8 scheme, or device, close quote, means any deliberate plan or
9 course of action or any affirmative act or any knowing
10 omission designed to deceive others by preventing or delaying
11 the discovery of material information.

12 Let me confer briefly with counsel, please.

13 (Begin sidebar conference)

14 THE COURT: Any objection to the instruction -- the
15 manner in which the instructions were read?

16 MR. SHOBAKI: No.

17 MR. SPERTUS: No, Your Honor.

18 MS. HEINZ: No, Your Honor. There's just a typo
19 that should be changed in the written ones.

20 MR. SPERTUS: The Cree --

21 MS. HEINZ: The Cree B.

22 MR. SPERTUS: It escaped all of our attention. We
23 can correct it off the record.

24 THE COURT: That's fine. There's a couple other
25 typos that I instructed the jury in the final version.

1 MR. SPERTUS: We agree.

2 MS. HEINZ: Thank you.

3 (End sidebar conference)

4 THE COURT: Ladies and gentlemen, as I said
5 earlier, we will now hear arguments by counsel.

6 We're going to start with the government. Then
7 that will be followed by the defense. And then after the
8 defense presents its argument, the government may respond.

9 I want to remind you again that what the attorneys
10 say during argument is not evidence.

11 So would the government please proceed.

12 MR. SHOBAKI: Yes, Your Honor.

13 May I have a moment to set up?

14 THE COURT: Yes.

15 (Pause in proceedings)

16 MR. SHOBAKI: Thank you.

17 **GOVERNMENT'S CLOSING ARGUMENT**

18 MR. SHOBAKI: Good morning, ladies and gentlemen.
19 This is a case about greed, lies, and monolithic microwave
20 integrated circuits, also known as MMICs.

21 As you've learned during this trial, MMICs and
22 specifically the high-powered gallium nitride MMICs that
23 operate in wide frequency bands are an important part of the
24 case. GaN MMIC power amplifiers are at the heart, they're
25 the engines that drive state-of-the-art communications,

1 radar, electronic warfare, and missile guidance systems.

2 They have extensive military uses, and they are
3 export controlled for purposes of the United States national
4 security.

5 Defendant knew all of that. He knew it because
6 he's an expert in microwave circuit design. He knew it
7 because he spent decades working at his own company, MMCOMM,
8 and at United States defense contractors on microwave
9 circuits.

10 He knew it because he had training and experience
11 in the export laws as they relate to MMIC power amplifiers.
12 What defendant also knew was that there was great demand for
13 high-power GaN MMIC amplifiers in the People's Republic of
14 China, in part because of this export restriction that the
15 United States and European countries have on the export of
16 these high-powered items.

17 In that demand, defendant and his co-conspirators
18 saw opportunity. They saw opportunity in that market, and
19 they approached that opportunity in a two-pronged approach.
20 One was developing MMIC design expertise in the People's
21 Republic of China. That's what Chengdu RML did.

22 The second was developing a factory or foundry as
23 you have heard about to build both gallium nitride and
24 gallium arsenide MMICs in the People's Republic of China.
25 That company was Chengdu GaStone, a company that defendant

1 ultimately became the president of in 2011.

2 Now, executing the plan to develop this capability
3 in the People's Republic of China required a lot of money and
4 it required the willingness to violate the United States
5 export laws. That's what defendant and his co-conspirators
6 did, and that's what the evidence has shown in this case.

7 They developed expertise, worked to build foundries
8 with production lines, and also exported custom MMICs that
9 they tricked American manufacturer Cree into building for
10 them.

11 Defendant was richly rewarded for his efforts.
12 Defendant's conduct is why you're here today.

13 Now, as the Court told you, the defendant is
14 charged with 18 counts in what's called the second
15 superseding indictment. This morning I'll explain to you how
16 the government has proved that defendant is guilty with
17 respect to each and every one of those counts, guilty beyond
18 a reasonable doubt.

19 After you hear arguments, as the Court told you,
20 the case will be yours to decide. When you go back to that
21 jury room, you're not going to have a copy of the indictment.
22 You're also not going to have a copy of this presentation or
23 any of the notes in this presentation about the exhibits that
24 helped and testimony that helped prove the case.

25 What you will have is the jury instructions which

1 incorporate in part the indictment to help explain the
2 charges which the Court just read to you. You'll have a copy
3 of a verdict form which calls for a verdict on each of the 18
4 counts. You'll have the exhibits from trial. You'll have
5 your recollection of the testimony from trial, and you have
6 your common sense.

7 Now, this is technically the sixth week of this
8 trial. You have heard a lot of testimony and you've seen a
9 lot of exhibits. There have been a lot of documents in this
10 case.

11 I'm not going to in this presentation rehash every
12 single exhibit that came in during the six weeks. I'm not
13 going to rehash every piece of testimony that proves each
14 charge. However, I will be highlighting the evidence that
15 goes to each element of each charge and shows that the
16 government proved that charge beyond a reasonable doubt.

17 Now, there is a lot of evidence, and it will take
18 some time to go through it, as the Court indicated to you.
19 So please bear with me as we step through the proof that the
20 government has presented in this case.

21 Now, the Court talked to you about the charges, and
22 those charges are discussed in the jury instructions. The
23 charges are export conspiracy. This charge, count 1, covers
24 the full length of the conduct that you heard testimony
25 about, dating back to somewhere around 2006 up through a few

1 years ago.

2 This count encompasses almost all of the conduct
3 that relates to the other 17 counts in the indictment. So in
4 the discussion of evidence for the conspiracy count, you will
5 hear evidence of the other counts. I'll try and call that
6 out to you, and then we'll explain it when we get to those
7 counts, too.

8 Count 2 is the illegal export. This specifically
9 relates to what has been talked about in this trial as the
10 export of the wafer containing MMICs from Cree run one to
11 Chengdu RML in Chengdu, China.

12 Counts 3 through 6 and 7 through 8 are fraud
13 counts. They both relate to a scheme to defraud. In this
14 case the scheme to defraud that is charged is a scheme to
15 defraud Cree.

16 The scheme was to get Cree's services, to get Cree
17 to manufacture the wafers containing MMIC power amplifiers
18 designed by Chengdu RML and to do it through subterfuge,
19 through a trick, that trick being the trick that it was
20 actually work done for Kiet Mai and his company, MicroEx, and
21 not for defendant and his co-conspirators in China and the
22 designers at Chengdu RML.

23 So the scheme, the lie, the trick on Cree, there
24 really is -- who Cree was doing the work for. And with
25 respect to the mail and wire fraud counts, there are four

1 mail counts. They relate to the shipment of Cree run one
2 from Cree to Kiet Mai, the shipment of Cree run one wafer out
3 of the United States to Hong Kong, the shipment of the second
4 run of wafers from North Carolina to California to Kiet Mai,
5 and then the shipment to Canada of at least one wafer from
6 that run.

7 Now, the wire fraud counts both relate to the use
8 of interstate wires. In this case it's interstate bank
9 transfers. There are two payments made from Morgan Stanley
10 accounts by Kiet Mai to Cree. The first payment was with
11 respect to Cree run one, and the second payment was with
12 respect to Cree run two.

13 The computer fraud conspiracy, this relates to the
14 access to Cree's portal. Kiet Mai working with defendant got
15 access to Cree's services, which included access to the Cree
16 portal and specifically access to download Cree manuals and
17 the Cree process design kit which you heard testimony about.
18 That's software downloaded from Cree's computers that allows
19 a designer who is designing MMIC power amplifiers to design
20 those amplifiers in a manner that allows them to be
21 manufactured by Cree.

22 In other words, it's all the rules and information
23 necessary to use Cree's foundry. That software is what was
24 available on the portal for authorized customers of Cree.

25 Count 10 is a money-laundering count. It's what's

1 called promotional money laundering. It relates to causing
2 money to come from outside the United States into the
3 United States to facilitate criminal activity. Here the
4 criminal activity being facilitated was the export
5 conspiracy, the fraud, and computer fraud.

6 The specific transaction here that's charged in
7 that count is when defendant instructed his co-conspirator
8 and brother, Ishiang Shih, to wire \$120,000 from JYS
9 Technologies bank account held in Canada to Kiet Mai's bank
10 account held in the United States at Bank of America.

11 It's that transfer of money, money that was used
12 ultimately for the second Cree run, that's charged in
13 count 10.

14 Count 11 relates to three false statements made by
15 the defendant to the FBI when he was interviewed after his
16 arrest, those statements being that Cree wafer or MMICs did
17 not go to China, did not go to Hong Kong, and that he was not
18 working on gallium nitride in China.

19 Counts 12 through 14 are tax return counts. They
20 relate to defendant's failure to report the income that he
21 was receiving in 2011 and 2012 and 2013. In 2011 that income
22 was the \$67,000 a month deposited into his secret Hong Kong
23 bank account beginning in August of that year.

24 In 2012 that income was that same \$67,000 a month
25 deposited over the course of the entire year and dividends

1 paid on the money sitting in that Hong Kong bank account.

2 Finally, the last tax charge relates just to
3 dividends that were paid on money sitting in the Hong Kong
4 bank account.

5 Finally with respect to counts 15 through 18, as
6 the Court instructed you, those are FBAR counts. As you
7 heard during the trial, there is -- the FBAR requirement
8 requires a -- requires the reporting of foreign bank accounts
9 that hold on aggregate more than \$10,000.

10 That aggregate is actually aggregate for all bank
11 accounts. In this case the evidence showed defendant
12 regularly reported to China CITIC Bank bank accounts but
13 concealed from his accountant and concealed on his FBARs the
14 existence of the Standard Chartered Hong Kong bank account
15 and the Coutts bank account also in Hong Kong.

16 So let's talk about the specifics of each charge.
17 Now, you received the jury instruction on conspiracy. This
18 relates to the export conspiracy.

19 The export conspiracy in this case, it's a long
20 instruction. There's a lot of text -- is that defendant and
21 at least one other person -- here a number of other
22 co-conspirators are charged -- agreed to knowingly and
23 willfully to do at least one of the following, which is to
24 export from the United States an export controlled item
25 without a license; to do so, to export any item, an item from

1 the United States to Chengdu GaStone after it was placed on
2 the entity list without a license, and in both instances to
3 do so without filing electronic export information.

4 So there's an agreement. And then there's -- the
5 second part of the conspiracy instruction requires that the
6 defendant become a member of the conspiracy knowing of at
7 least one of its objects.

8 As you've seen throughout this case, defendant was
9 intimately involved in this conspiracy and was driving its
10 object.

11 So what is a conspiracy? Again, the jury
12 instructions on this tell you what a conspiracy is. Jury
13 instruction 23 specifically describes a conspiracy. It is a
14 criminal partnership. It is an agreement to commit one or
15 more crimes.

16 It isn't the commission of the crime. That's a
17 separate crime. It's the agreement. And it doesn't matter
18 whether the agreement was actually successful. Here the
19 evidence shows at least with respect to one export the
20 agreement did bear fruit, and that is charged in count 2, the
21 export of the Cree run one wafer containing high-powered
22 MMICs from the United States to the People's Republic of
23 China.

24 Now, in the conspiracy how do you know that there's
25 an agreement? There are a lot of ways to tell that

1 conspirators have agreed. You can tell through their words,
2 through their actions. In this case their actions involved
3 early plotting. Their actions involved wafer runs and
4 shipments that you saw evidence about, wafer runs and
5 shipments that transited the globe on their way back to
6 China.

7 You saw evidence about money and secrets. You saw
8 business plans. This conspiracy involving Chengdu GaStone,
9 the establishment of a foundry in China, and the building up
10 the MMIC design capabilities at Chengdu RML involved a series
11 of business plans.

12 Those are documents that were mailed around between
13 the conspirators. So in those documents, you see in the
14 conspirators' and in defendant's own words the plans, the
15 intent, what it was they were agreeing to do.

16 Finally, in engaging in the fraud on Cree, to
17 actually get Cree to manufacture MMICs, you also see the
18 concert of action between the members of the conspiracy to
19 accomplish that goal.

20 Now, let's discuss early plotting. Now, defendant
21 was the president of a company called MMCOMM. You heard
22 testimony about this. You heard from people who worked with
23 defendant at MMCOMM, including Jesse Lu. At MMCOMM the
24 defendant got to know his co-conspirator, Yaping Chen.

25 Yaping Chen was a businessman who operated Dingtian

1 Micro in Chengdu, China. This is the first evidence back in
2 July of 2005 of defendant and Yaping Chen coming together.
3 You recall Lilie Chen talked about his father meeting
4 defendant for the first time around this time, and you saw a
5 presentation about Dingtian Micro and MMCOMM working together
6 on a KA 10-watt power amplifier module, a module that Yaping
7 Chen and defendant are holding in this photo.

8 So this is the early stages of defendant and Yaping
9 Chen getting to know each other and beginning to develop
10 plans in connection with microwave technology.

11 You also saw and heard about somebody call Ye Fei,
12 another of the conspirators in this case. Ye Fei, as you
13 saw, used a variety of names and e-mail addresses -- Michael
14 Anderson, Michael Ye, Michael Jackson, Michael Dixon, all of
15 these different names, all these different e-mails in
16 communications with the defendant.

17 Those communications related to the shipment of
18 parts to Dingtian Micro in China through a variety of routes.
19 First, there is discussions about shipping TriQuint parts,
20 TriQuint power amplifiers, through a company called Augar
21 International. You saw e-mails about this.

22 Jesse Lu also testified about it, that materials
23 were being sent to Augar International in Singapore on behalf
24 of Dingtian Micro.

25 Fei Ye also in e-mails asked defendant to bring

1 parts with him to China. And you know that defendant did go
2 to China and meet with Fei Ye because in e-mails defendant
3 referenced going to China and giving purchase orders to Fei
4 Ye and discussing the use of Augar.

5 Now, Fei Ye and defendant also very early on talked
6 about some of the plans that would ultimately lead to the
7 establishment of Chengdu GaStone. Back in 2006 they were
8 discussing building up MMIC design capability in China and
9 building a foundry in China, things that didn't exist.

10 Again, the design portion ultimately became Chengdu
11 RML, which is Yaping Chen's company. The foundry project
12 ultimately became Chengdu GaStone, the company which
13 defendant was the president of and which was placed on the
14 United States entity list in August of 2014.

15 They were already working at this point on plans
16 for developing MMIC power amplifiers. And because there was
17 no capability to really build those in Chengdu at the time,
18 to use WIN.

19 You've heard a lot of testimony about WIN. WIN
20 Semiconductors operates a foundry in Taiwan and at this time
21 was making gallium arsenide processed MMICs.

22 Now, Yaping Chen became the general manager and
23 technical director of Chengdu RML Technology. You saw that
24 in his visa application documents when he was applying to
25 come to the United States and on his resumes.

1 You also saw documents that showed that defendant
2 was a part owner of Chengdu RML. He had shares in Chengdu
3 RML held through a third party, through another person but
4 defendant's shares.

5 You saw evidence that defendant worked on designs
6 with and for RML and on producing wafer runs for RML from
7 2007 to at least 2016, over a very lengthy period of time.
8 Defendant was tied in with RML and his co-conspirator, Yaping
9 Chen.

10 Exhibit 2010. You saw this exhibit a lot, and it's
11 an important exhibit. It's an exhibit, a document that came
12 off of defendant's laptop. It's a document that was in this
13 directory, RML works summary 2016 February 01. This document
14 details much if not all of the work that defendant was doing
15 with RML and on projects for China.

16 Now, as part of the early plotting with Yaping Chen
17 and Fei Ye, defendant participated in designing and
18 facilitating WIN wafer runs. You saw this, for example, in
19 2009 working for a customer. Defendant was helping produce
20 wafers for customers. Hope the customer was impressed.

21 Defendant started asking Yaping Chen to send money,
22 instructing him to send money, sending \$100,000 to JYS in
23 Canada, his brother, Ishiang Shih, and co-conspirator's
24 company bank account.

25 And also at that time \$100,000 to a China Trust

1 Bank account in the United States held by defendant's
2 brother-in-law.

3 You also saw and heard testimony about Air China
4 pilots as part of this early time in the process. Fei Ye
5 e-mailed repeatedly with defendant and on three different
6 occasions, in August, October, and December 2009, e-mailed
7 with him about meeting Air China pilots at hotels near LAX
8 and giving them things, giving them things to take to China.

9 For example, on December 3rd, an e-mail about a
10 Chinese pilot. You tell him that it's just a module made of
11 some metal for him to carry. Don't mention anything about
12 MMIC. So this is what defendant was doing, traveling,
13 meeting Air China pilots, and sending things to China.

14 Now, you also heard testimony about these WIN wafer
15 runs. We saw in the communications that WIN would not ship
16 to Hong Kong. Defendant e-mailed Yaping Chen in August 2009:
17 WIN cannot drop ship to Hong Kong. Hong Kong, as you heard
18 from Eric Lin and as you saw in the evidence, is a gateway to
19 China.

20 Shipments to Hong Kong, if you want to ship to
21 China, that's the place you ship. Ship to Hong Kong. Can't
22 ship to Hong Kong. May want to try Singapore. You remember,
23 Singapore is where Augar International was, the other path
24 that defendant used to ship things to China.

25 WIN also e-mailed defendant's co-conspirator

1 brother at around the same time. Sorry, we can't ship these
2 to China. So defendant arranged to pick up at least one of
3 the wafers in Taiwan because he happened to be there.

4 Now, you saw and heard in testimony from Special
5 Agent Willie Lo a compilation of information about shipments
6 from WIN that ultimately made their way back to Hong Kong.

7 This chart, which is Exhibit 5004, summarizes those
8 records. It's drawn off of WIN shipment records and
9 invoices, shipping records for the packages sent from WIN to
10 JYS Technologies; border crossing records for two employees
11 of JYS Technologist, Jack Yu and Yu Mo Chen; records from a
12 company in Champlain, New York, Freeport Forwarding; and
13 information from Oclaro, which is a company where one of
14 Lilie Chen's friends worked, Hao Chen. And he testified
15 about receiving packages and then sending them on to China,
16 helping his friend Lilie out.

17 Now, defendant and Yaping Chen, Lilie Chen
18 testified that defendant and Yaping Chen both told him they
19 were unable to place orders for wafers to be manufactured at
20 WIN from China. Lilie Chen was instructed by them to ship
21 packages he received or his friends received on his behalf in
22 the Bay Area to Hong Kong and to mark them as low-value glass
23 samples. You saw this over and over and over again.

24 Shipments traveled from WIN in Taiwan to JYS
25 Technologies in Montreal to Freeport Forwarding to San Jose

1 and then to Hong Kong. The records compiled in that chart,
2 Exhibit 5004, show that for 13 shipments.

3 Now, Montreal, Canada, and Champlain, New York, are
4 about 35 miles apart. These wafers were shipped to JYS,
5 driven across the border, shipped to San Jose, and then
6 shipped to Hong Kong, zipping right past Taiwan on the way.

7 Now, WIN does ship to Canada. Here's an example of
8 a WIN invoice. This is a WIN to JYS invoice for \$84,000, six
9 wafers, in October of 2013. Then shipped, taken across the
10 border, shipped to San Jose. In San Jose it was sent out.
11 This one was sent by Eric Lin, who you also heard from at
12 trial from Elite Performance, and sent to Austin Yu at SDV
13 Hong Kong.

14 Now, those six wafers that were \$84,000 on the
15 invoice from WIN to JYS suddenly became \$1,200 of glass
16 samples when they were shipped to Hong Kong. Again, this is
17 a method that you saw used again and again in the evidence to
18 move things from Taiwan to Canada to the United States and
19 back to China.

20 You later saw that this same method of shipment was
21 used to ship the Cree run one wafer from California to China.
22 Now, that same wafer run spreadsheet, Exhibit 2010, on
23 defendant's laptop had entries for these wafers. It had
24 entries that showed them as part of wafer run 39. It showed
25 the dates of shipment.

1 This spreadsheet contained a lot of information,
2 and you'll see it again. But it contained information about
3 how much the project budget was, how much defendant got paid,
4 where the money was sent, the dates of invoicing, the dates
5 of shipment, and descriptions of what the project was.

6 So let's talk about payment destinations. A number
7 of different payment destinations are identified in
8 defendant's wafer project spreadsheet. Those are ICB,
9 Industrial Commercial Bank in China, JYS, JYS Technologies
10 account at TD Bank in Canada. YWL you will recall is
11 defendant's brother-in-law's account here in the
12 United States.

13 HK was defendant's secret Standard Chartered bank
14 account. That's the bank account that we'll talk about that
15 in a bit, but that's the bank account he opened using his
16 Taiwanese passport, not his American passport.

17 Now, the final account is Pullman Lane Productions.
18 That's defendant's company here in the United States. They
19 also have bank accounts into which money was deposited.

20 Now, the wafer run spreadsheets include entries for
21 couple of runs that are of particular importance in this
22 case. Those are what was called the Z5 project. The Z5
23 project was the project involving the design of GaN MMIC
24 power amplifiers and transistors in Cree run two to be built
25 by Cree. Those entries are here. We'll talk about this in

1 the context of Cree a little bit later.

2 This spreadsheet, soup to nuts, covered from the
3 beginning all the way through 2016 all of the wafer runs that
4 defendant was involved with working on with RML as part of
5 the conspiracy.

6 Now, another part of the conspiracy and where you
7 can see agreement is the money and the secrets. So Jieru
8 Deng, you heard about Jieru Deng. You saw a picture of her.
9 She's also sometimes called Deng Jieru. I'm sorry if I
10 switch the names around, but they can be switched. It's
11 common with Chinese names.

12 You saw pictures of her at UCLA at some point. She
13 became involved somewhere around 2010 with the conspiracy and
14 became a co-conspirator. In November of 2010 you saw that
15 she sent confirmation that a million dollars had been sent
16 and deposited into defendant's Pullman Lane bank account in
17 the United States.

18 In 2011 in April, Yaping Chen forwarded information
19 that almost \$400,000 had been sent by Deng Jieru to an
20 account in defendant's name at ICBC in Chengdu. The
21 documents attached to that show that it's an account in
22 defendant's name at that bank in Chengdu, China.

23 Now, later that year, a couple of weeks after that
24 payment into the account in Chengdu, China, defendant did
25 something that is very important for this case. Defendant

1 opened accounts at Standard Chartered Bank in Hong Kong. He
2 used his Taiwanese passport to open the account and on the
3 documents claimed he's not a United States citizen.

4 This secret bank account in Hong Kong is where
5 defendant received vast sums of money during the course of
6 the conspiracy, vast sums of money that was not taxed, as you
7 heard from Judy Chen, by any tax authority. There were no
8 withholdings.

9 Now, Judy Chen, you heard about Mystical Optimism
10 from Judy Chen. Judy Chen talked about Mystical Optimism as
11 a company that her father had set up as a British Virgin
12 Islands company. It had a bank account in Hong Kong. It had
13 a bank account at HSBC Bank, which is a bank in Hong Kong.

14 That account had been set up by her father. It was
15 used by her father, she testified, and she was a signatory on
16 the account. Now, Judy Chen also told you that Yaping Chen
17 approached her because he knew about this bank account. He
18 knew her father.

19 He knew about this bank account in Hong Kong, a
20 bank account held by a British Virgin Islands company that
21 wasn't really being used for anything. That bank account
22 became the first big slush fund for the conspiracy.

23 So in 2011 defendant resigned from Honeywell
24 effective July 1st, 2011, and became the president of Chengdu
25 GaStone Technology on July 3rd. His annual salary there, he

1 was paid a salary of approximately \$300,000 as the president
2 of Chengdu GaStone.

3 Now, speaking of Mystical Optimism, you saw the
4 spreadsheet that Judy Chen maintained for Mystical Optimism's
5 finances and for the finances of the conspiracy. It detailed
6 payments she was instructed to make by Yaping Chen, and she
7 sent that spreadsheet to Yaping Chen regularly.

8 In fact, the spreadsheet that you've seen in
9 evidence, 608A, is attached to an e-mail to Yaping Chen, and
10 it details her payments, payments she made at his instruction
11 on behalf of the project or the conspiracy.

12 Now, that spreadsheet is backed up by HSBC Bank
13 records. Judy Chen got those bank records from Hong Kong.
14 Those records are Exhibits 1101 and 1102. Those are the
15 actual bank records from Hong Kong that cross-check against
16 the spreadsheet.

17 So in 2011 Yaping Chen instructed Judy Chen to pay
18 defendant \$67,000 a month from the Mystical Optimism HSBC
19 Hong Kong account into defendant's secret Standard Chartered
20 Hong Kong bank account. Those payments were made regularly
21 every month from then through the end of 2012.

22 This was compensation, not reimbursement for
23 projects, not payment for expenses on other things. As
24 you'll see, those kinds of expenses were categorized
25 differently in her spreadsheet.

1 Other co-conspirators also received regular
2 salaries from the Mystical Optimism account. Jieru Deng,
3 Yaping Chen, Ishiang Shih, and others all also got monthly
4 payments out of that account.

5 Now, Special Agent Carlos Tropea from the IRS went
6 through a lot of financial documents with you, and he
7 demonstrated how Deng Jieru was associated with sending money
8 to defendant's accounts. Judy Chen also testified that Deng
9 Jieru was involved with financing the project.

10 You saw money coming from QTC, which was added to
11 the entity list in August of 2014. You saw money from Zhuhai
12 Trading, from Zeon Mau Trading. You saw e-mails with Deng
13 Jieru about money being sent from Dragon Gain Enterprises.

14 You also saw Deng Jieru copied later on on e-mail
15 requests for payment from the defendant where he was
16 ultimately paid by a company called One Five Nine Investment
17 Holding, Limited.

18 THE COURT: Mr. Shobaki, if you could talk a little
19 more slowly, please.

20 MR. SHOBAKI: Yes, Your Honor. Sorry.

21 THE COURT: Thank you.

22 MR. SHOBAKI: Now, Special Agent Tropea prepared a
23 series of charts. We're not going to go back over all these
24 charts. What these charts showed is the sophisticated web of
25 payments that were made from these Chinese front companies to

1 defendant's accounts, to JYS Technologies' account, and to
2 Mystical Optimism.

3 The records showed that those three companies put
4 approximately \$5.8 million into Mystical Optimism's Hong Kong
5 account. About 1.6 million went into Pullman Lane in the
6 United States, and about 2.9 million went into JYS
7 Technologies, Canada.

8 That money was funneled from those front companies
9 through Pullman Lane. Some of it was funneled through
10 Pullman Lane to UCLA in the form of those checks that you
11 saw. Some of the money was funneled through JYS
12 Technologies, a lot of it to WIN to pay for the wafer runs.

13 The JYS Technologies account in Canada was used for
14 a lot of sort of operations expenses.

15 Now, this chart doesn't include cross payments
16 between the accounts because Mystical Optimism also sent
17 money to JYS.

18 Now, how else do you know that there was agreement?
19 You saw business plans. As early as 2009, defendant sent a
20 13-page preliminary plan to establish an advanced three five
21 wafer manufacturing facility.

22 You recall Dr. Sandison and some of the other
23 witnesses explained to you that that three five refers to the
24 table, the periodic table of elements and that this is a
25 discussion about gallium arsenide and gallium nitride

1 manufacturing.

2 Yaping Chen and defendant's communications again
3 showed that this idea that had -- that you saw the first
4 evidence of with Fei Ye has been -- began developing into an
5 actual plan to build the foundry and to develop the
6 expertise.

7 You also saw shortly thereafter a plan document
8 sent by co-conspirator Ishiang Shih to defendant. That was
9 in January of 2010. That was about epitaxy. You remember
10 that Dr. Sandison explained that -- and Dr. Nordquist -- that
11 when manufacturing wafers, whether they're gallium arsenide
12 or gallium nitride, that you begin with a wafer. It looks a
13 little bit like a compact disk. That wafer is specially
14 grown in a manner that makes it suitable to build your
15 electronic circuitry on top of.

16 THE COURT: One moment. When you get to a
17 convenient place, could you let me know so we can take a
18 short break, please.

19 MR. SHOBAKI: Yes, Your Honor. I'll just finish
20 talking about epitaxy.

21 THE COURT: Thank you.

22 MR. SHOBAKI: So the defendant's brother and
23 co-conspirator sent a discussion about an epitaxy plan. Now,
24 you recall again this is the first part, the first kind of --
25 if you think of it as a raw material that goes into building

1 MMICs onto a wafer, it's the plate that you build it onto.

2 So if you're building -- if you're setting up to
3 build a foundry, one of your inputs is going to be the
4 epitaxial material, the plates. Defendant's brother
5 identified the issue that it was difficult to get these from
6 the United States and European countries and that a project
7 to develop an epitaxy plant in China would be a necessary
8 part of the plan.

9 He also described in that document affiliate
10 businesses, joint venture, downstream factories in Chengdu.
11 That would include Chengdu GaStone, the foundry which would
12 use these wafers, and 29S and other military units. 29S is
13 CTC29 which you heard testimony about from Peter Mattis, is a
14 Chinese government-controlled institute in China.

15 Stop there.

16 THE COURT: Ladies and gentlemen, we're going to
17 take a short break here, about ten minutes, and then resume.
18 Please don't discuss anything to do with this matter during
19 the break.

20 Thank you.

21 THE CLERK: All rise.

22 (Open court - jury not present)

23 THE COURT: As soon as the jurors are ready, we'll
24 resume.

25 (Recess taken from 10:34 a.m. until 10:51 a.m.)

1 THE COURT: Mr. Shobaki, if you could please slow
2 down, it will help the reporter, especially with respect to
3 some of the challenging words.

4 MR. SHOBAKI: Thank you. We've spoken, and I'm
5 going to provide her a copy of the presentation also to aid
6 with that.

7 THE CLERK: All rise.

8 (Open court - jury present)

9 THE COURT: Please be seated. All 12 jurors are
10 back. All counsel and parties and party representatives are
11 here.

12 Please proceed, Mr. Shobaki.

13 MR. SHOBAKI: I'm not sure where I left off.
14 Should I start from the beginning or start with epitaxy
15 again?

16 Now, we left off talking about defendant's brother
17 and co-conspirator, Ishiang Shih, sending this epitaxy
18 proposal. This was part of a series of plans that were
19 mailed around and concluding with some really big ones,
20 including a 95-page PowerPoint plan shared between defendant
21 and co-conspirator Yaping Chen in July of 2010.

22 That document -- again, these are documents that
23 are the conspirators' documents. These are not presentations
24 made by the government. These are their words. This is
25 their discussion of their plan. They again have now

1 developed and -- you notice these slides have defendant and
2 his brother co-conspirator's names on the bottom of them.
3 The executive summary, a plan to build a semiconductor
4 capability in China. Again, that capability relates to both
5 the manufacture and design and discusses having the right
6 team.

7 This presentation also focuses, discusses both
8 gallium arsenide and gallium nitride. It discusses the
9 gallium nitride device market forecast. This is a slide that
10 you have seen that was discussed by, among other people,
11 Dr. Sandison when he was speaking to you about what these
12 presentations meant or, like, how to understand them.

13 In this circumstance, as you can see, there's a
14 projected large growth in the GaN market which is part of why
15 the co-conspirators wanted to get in on that market. That
16 market is driven by, as you can see, a large part of that is
17 military. There are also other civilian uses of technology.

18 To be clear, in this case the evidence shows that
19 defendant and his co-conspirators were interested in making
20 money, and they could make money both in the civilian and the
21 military market. But many of the presentations and early
22 discussions focused on the special customers, special
23 domestic customer market.

24 At the front end a lot of the demand and planning
25 was towards military products, but there's also certainly

1 civilian applications for both gallium arsenide and gallium
2 nitride that are money-making applications that Chengdu RML
3 and Chengdu GaStone would be able to take advantage of.

4 Again, there's discussions about the growth in the
5 GaN market. For the -- one of the first times you see
6 identified key competitors in the GaN market, competitors --
7 these are companies with GaN foundries, again none of these
8 in China. And Cree is identified here.

9 You also saw a series of board minutes. You will
10 recall that Lilie Chen, when he testified, talked about a
11 variety of meetings that he was present at in Chengdu, China,
12 where he lived for some period of time. His father, of
13 course, Yaping Chen, is a member of the conspiracy.

14 Those meetings took place on the 29th floor of
15 Renheng, which is the offices of GaStone. You see minutes
16 from back in 2010 of a different company, Chengdu Ganide
17 Technology that are held in the same place.

18 They have a five-person board of directors
19 including defendant and co-conspirators Yaping Chen and Jieru
20 Deng. It's a discussion about establishing a business. This
21 is one of the precursor discussions for the conspiracy's
22 business in GaStone. It includes five-year plan that talk
23 about among other things the specialty market.

24 There's also discussion of commercial market, but
25 there's certainly discussion of specialty market.

1 Now, the GaStone business plan, also sent by
2 defendant and involving Yaping Chen and HB Zhao, both RML
3 e-mail addresses. It includes a writeup for a business plan.
4 This is a Chinese-language document.

5 You saw many Chinese-language documents which are
6 translated. So when you have an Exhibit 144, for example,
7 144A is the translated version of it. And for a few of them
8 where there's a dispute about translation, there's a B, and
9 that's the defense's proposed translation.

10 Now, this document details among other things a
11 plan for GaStone to surpass WIN and TriQuint, which is a U.S.
12 foundry, within ten years. There's discussion in this
13 document about export control laws. It discusses the fact
14 that European Union, EU, and the United States export
15 licenses greatly hinder the development of communications in
16 a remote sense in aviation and aerospace.

17 There aren't fewer words that can be put on a slide
18 to convey this, so for a few of these slides that involve
19 plan documents, I apologize, but there's going to be a lot of
20 words. And the words are important. That's why they're up
21 there.

22 Again, this presentation discusses GaN technology
23 as moving from lab to market. It talks about the DARPA
24 support. That the United States Defense Advanced Research
25 Projects Agency. You heard about that again when

1 Dr. Sandison was talking about that very large PowerPoint,
2 Exhibit 2017A. There are a number of slides there that
3 discuss DARPA's role in helping advance GaN technology
4 because of its importance and strategic importance to the
5 United States.

6 Now, this document also shows defendant as the
7 president and head on the organizational chart for GaStone.
8 And in the context of GaStone, recall there's design and
9 manufacture. In manufacturing there are also controls that
10 are discussed by defendant and co-conspirators with respect
11 to some of the equipment that you need to start a foundry.

12 So not only are the things that a foundry makes
13 potentially export controlled like the GaN MMICs in this
14 case, but also the equipment that you would use to build a
15 foundry. Some of the equipment you would have in place that
16 you need.

17 Recall Dr. Sandison talked about the plans for the
18 foundry. He talked about the architectural drawings, the
19 huge spaces, the equipment that was necessary. These are
20 large factories. And certain portions of the equipment used
21 in manufacture of gallium arsenide and gallium nitride MMICs
22 are also controlled.

23 The document lays out again that these two
24 processes, gallium arsenide and gallium nitride
25 manufacturing, are principally regulated by European and U.S.

1 export license controls.

2 You will recall Mr. Monroy talked about the
3 Wassenaar arrangement, the arrangement between the
4 United States and NATO allies and some other nations, notably
5 not including China, that relates to how they decide on the
6 ECCNs and how to decide on the performance levels for various
7 equipment to control.

8 Those controls are the controls that are being
9 discussed here, the European and U.S. export controls, the
10 agreement among those various nations on what equipment and
11 what devices they are going to restrict for export.

12 Now, those documents and business plans both show
13 the agreement of the conspirators. They also show something
14 else which we'll talk about more in a couple of minutes. But
15 the knowing and willful nature, what you can see in these
16 documents is numerous discussions about export controls,
17 about the restrictions on bringing things into China.
18 Clearly the conspirators are aware of the fact that the area
19 they're working in is one where there are tight controls on
20 many aspects of the business.

21 Now, the fraud on Cree. The first inklings of this
22 project are actually seen on a file on defendant's -- one of
23 defendant's digital devices. It's a file that was found at
24 -- it's document 2106, found at this file path on one of his
25 devices, again in an RML directory, project with RML.

1 That document is -- the translated version is
2 2106A. The GaN chip project Z5 implementation plan. And Z5
3 as we've seen in the evidence is what's used to refer to the
4 project involving Cree and the plan involving getting Cree to
5 manufacture certain gallium nitride MMICs.

6 This plan discusses Chengdu RML and the 607
7 Institute developing a Z5 chip. The customer identified in
8 the document is a 607 Institute of China Avionics. It
9 discusses a wideband high frequency GaN chip which is exactly
10 what was designed and manufactured in Cree run one. Not just
11 one chip but a variety of designs that were wideband and high
12 frequency -- sorry, and high power.

13 It sets out a project timeline with various phases
14 from 2013 to 2015. The document discusses addressing the
15 airborne needs of the 607, which is AVIC 607 Institute. You
16 heard testimony from Mr. Mattis that AVIC 607 is a company in
17 China that develops missiles and missile guidance systems.

18 This is a project developing chips for a company
19 that makes missiles and missile guidance systems. It also
20 identifies Ye Yuan, another one of the co-conspirators, and
21 defendant involved in providing guidance on the design.

22 This project notably talks about using -- and it's
23 highlighted here -- high performance .25 micrometer GaN
24 processing line from overseas for the short term -- in other
25 words, making the Z5 chips using an overseas foundry.

1 It also talks about taking advantage of the
2 experience accumulated by RML in the area of high-power,
3 active, electronically steered antennas. That's something
4 you've seen elsewhere that Dr. Sandison discussed, those
5 antennas.

6 This slide, if you remember, is from that 2017A
7 presentation, the big business presentation that Dr. Sandison
8 talked through with you. And this slide showed that in the
9 bottom right part what Dr. Sandison described as an airborne
10 electronically steered array. That is a radar array that is
11 steered electronically that uses transmit receive modules
12 which incorporate MMIC power amplifiers like the ones
13 manufactured by Cree.

14 So here, again going back, you see there's a
15 discussion about developing GaN chips, TR transmit receive
16 modules that use those chips. And those are transmit receive
17 modules that go into active electronically steered radars
18 which, as this slide prepared as part of defendant's business
19 presentation, includes examples of Japanese missiles and
20 Raytheon radar technology.

21 This same presentation, the Chengdu GaStone
22 business presentation, also includes a variety of plans
23 related to sales numbers, major customers, and statistics,
24 planning out forward from the time of the presentation and
25 included discussing the GaN first batch of specialty

1 products, major customers, again AVIC 607. That's the
2 customer for the Z5 project.

3 Now, in early 2013 defendant directed
4 co-conspirator Yuan Ye who was at that time visiting at UCLA
5 to attempt to purchase Cree parts through UCLA. You saw the
6 e-mail communications. That didn't pan out. He wasn't able
7 to purchase any Cree parts through UCLA.

8 So defendant then around that same time met with
9 Kiet Mai who you heard from. He talked about going to lunch
10 with defendant and defendant's proposal that Kiet Mai could
11 get services from Cree for defendant for a 20 percent
12 commission.

13 Kiet Mai turned around and contacted Cree. He
14 contacted Cree and specifically Dr. Barner at Cree asking
15 about full wafer service for GaN .25 micrometer. That is
16 almost exactly the same description that was given for the Z5
17 project in the file on defendant's computer. The Z5 project
18 was Cree.

19 Dr. Barner sent -- and you saw these documents and
20 they were talked about a lot, the export compliance
21 questionnaire, the brochure about Cree's foundry services,
22 and the product development kit agreement.

23 There's also been a lot of talk about the product
24 development kit. Again, I touched on this at the beginning.
25 That is a piece of software, a collection of pieces of

1 software that plugs into a design program. So, for example,
2 if you have a program for doing architectural layouts of a
3 house and you -- Kohler, the kitchen company, has special
4 faucets and special toilets and shapes. And you want to be
5 able to design using those. You would get that information
6 from them, plug it into your program, and be able to lay it
7 out.

8 This is the same thing. A product development kit
9 includes specific information about the rules and processes
10 for laying out MMIC designs to build using Cree's processes.

11 Now, you see and you've seen a series of e-mail
12 communications. Again, way too many to publish, but these
13 e-mail communications demonstrate again and again and again
14 that defendant was using Kiet Mai as a go-between to hide the
15 involvement of defendant and his co-conspirators, including
16 the designers at RML, from Cree as part of this process.

17 Kiet Mai sent the export control questionnaire and
18 PDK agreement to the defendant. He asked him to answer the
19 attached. They spent a variety of e-mails back and forth on
20 this. Kiet Mai told you defendant provided the answers for
21 the questionnaire. That export questionnaire, other than
22 Kiet Mai's name and MicroEx's address, was filled out with
23 information from the defendant.

24 He e-mailed it back. Dr. Barner testified that
25 looking at the questionnaire, it struck him that it was

1 possible that some -- that it would involve some export
2 controlled MMIC designs. But as he further discussed from
3 talking with Kiet Mai and from doing some diligence on
4 MicroEx, he determined that it looked like MicroEx was a
5 company, a small company out in California that was doing
6 MMIC design. There are no export restrictions on sending
7 things to California from North Carolina. It's within the
8 United States.

9 So this is the form. This form indicated
10 essentially every single answer necessary to say no problem,
11 nothing to see here. Don't worry about it. Not dual use.
12 Not going to be exported. Not subject to the EAR, nothing.

13 Now, Dr. Barner testified that Cree -- that he
14 specifically asked for more information about MicroEx, got
15 some documents showing that it was incorporated in
16 California, and then asked an important question. And this
17 is an important question in the context of the fraud that was
18 perpetrated on Cree: Will your company be doing the design,
19 testing, and use of the MMICs? Kiet Mai said yes.

20 Now, the evidence at trial has shown that MicroEx
21 and Kiet Mai did nothing other than relay e-mails back and
22 forth and collect money from defendant and move that money on
23 to Cree to pay for services and for the MMICs ultimately.

24 Now, Dr. Barner testified that it was important for
25 Cree -- the reason he was asking these questions is it was

1 important for Cree to know who was working using their
2 technology, who was using the PDK agreement, and ultimately
3 where any devices manufactured by Cree would go, because if
4 there was -- if any indication suggested that there would be
5 export issues with the MMICs that Cree would be building on
6 these wafers, then Cree would have a much more in-depth
7 conversation with Kiet Mai.

8 But Kiet Mai's answers were all calculated to
9 deflect that concern from Cree. So Cree entered into a
10 business relationship with Kiet Mai, but really that was a
11 business relationship on behalf of defendant and his
12 co-conspirators.

13 So there's a few more e-mails. And then in
14 March -- another important point -- that's when Dr. Barner
15 e-mailed Kiet Mai the user name and password for the Cree
16 portal.

17 You recall the Cree portal was a website where it
18 -- you logged on -- it's a secure website -- with a user name
19 and password to log on and to do a few things, to be able to
20 download software including the PDK, to be able to download
21 documentation like the manuals, and also ultimately a
22 location where, as you saw in the e-mails, files could be
23 shared.

24 So, for example, the design files that were
25 ultimately created, they're called GDS files. Dr. Nordquist

1 explained about this, that GDS files are basically a file
2 with the layout, the whole design of the circuit. It's that
3 file which Cree needs to manufacture the circuits. Those
4 files were exchanged using the portal.

5 So Kiet Mai got it and then turned around and sent
6 it to the defendant. Here's the design access.

7 And you saw in the e-mails -- again, I'm not going
8 to go through every single one, but every single e-mail
9 communication Kiet Mai got a substantive question from Cree.
10 He would relay it back to defendant. Defendant would send
11 him the answers. Kiet Mai would send those answers to Cree
12 as though it was him that was answering the questions that
13 Cree was asking.

14 So defendant ultimately sent the reticle plan,
15 which is -- the reticle, as you recall, is essentially the
16 stamp that was replicated across these wafers. Reticle one
17 is where the three MMICs that Dr. Nordquist talked about and
18 testified about testing were located.

19 He sent an initial reticle plan over, and the
20 conversation began to involve not just Dr. Barner but
21 somebody called Dan Fritz at Cree. Dan Fritz worked to make
22 sure that the layout files actually complied with Cree's
23 rules and that the layout files, the GDS files for the
24 designs, could be built and that they would comply with
25 Cree's rules and would work as designed.

1 There is innumerable e-mails back and forth.
2 Defendant is answering all the questions, and Kiet Mai is
3 just passing on the information. There's also evidence that
4 shows defendant was using the Cree portal. For example, in
5 September of 2013, Kiet Mai wasn't able to log on to the
6 portal. So he e-mailed defendant to ask if he changed the
7 password.

8 There's also evidence that was found on defendant's
9 digital devices, exhibits -- those exhibits are actually
10 documents with the login information for the portal and the
11 Kiet Mai account.

12 There are portal -- there are additional portal
13 documents downloaded from the portal on the computer which
14 include the foundry manual and a listing of the files located
15 in the process design kit.

16 Now, as the design started to mature for the Cree
17 run one wafer, RML designers and engineers became more
18 involved in the communications. You saw this again and again
19 in the e-mails. Kiet Mai would communicate with Dr. Barner
20 and Dan Fritz at Cree.

21 He would do that using usually his MicroEx e-mail
22 account. He would communicate with defendant on one of
23 defendant's U.S. accounts, Google, Yahoo! one of his accounts
24 on those types of providers, and then defendant would turn
25 around and send those substantive communications internally

1 at RML using his Chengdu RML e-mail.

2 Now, those Chengdu RML e-mails, as you heard, came
3 off of defendant's computer here in Los Angeles, which was
4 seized and searched. Those are Chinese e-mails, company
5 e-mails that were downloaded to defendant's computer and
6 stored locally here in the United States, which is how they
7 were seized by the FBI during this case.

8 They discussed many technical issues. And just for
9 an example, in October 4th, 2013, Dan Fritz sent Kiet Mai a
10 list of issues with reticle one and reticle two designs.

11 Then you see in Exhibit 2733, five days later, a
12 chain of internal e-mails within Chengdu RML on their e-mail
13 addresses that includes co-conspirators Ye Yuan and other RML
14 employees and has a copy of that exact same list that was
15 sent by Dan Fritz.

16 So Dan Fritz's e-mails with Kiet Mai are just
17 making it over to RML where they're being discussed, changes
18 are being made to designs, and then they're being funneled
19 back as though they're coming from Kiet Mai.

20 The e-mails make it clear that Chengdu RML was
21 doing the design work. Now, the total cost for Cree run one
22 was \$130,000. That was paid -- that was to be paid in five
23 installment payments. And you saw records related to these.
24 You saw checks related to these.

25 And \$130,000 plus the commission for Kiet Mai was

1 sent from the Pullman Lane account to MicroEx. And then
2 MicroEx transmitted ultimately \$130,000 to Cree in a series
3 of payments to pay for run one. The final payment for run
4 one was actually done using a wire transfer on December 24th,
5 2013. That's a transfer from a Morgan Stanley bank account.
6 That's the wire transfer charged as count 7 in the wire fraud
7 scheme.

8 So we'll come back to that in terms of the wire
9 fraud scheme, but that is the transaction that is charged, a
10 use of interstate wires to transfer that money.

11 Now, Cree run number one you also saw was shipped
12 to Kiet Mai. It was shipped on December 26th, 2013, from
13 North Carolina to Torrance. That's count 3. That is a
14 mailing. That mailing from Cree is charged as part of the
15 mail fraud scheme.

16 Kiet Mai let defendant know that the wafer had --
17 that the wafers had arrived. Defendant picked them up. You
18 heard that from Kiet Mai. Defendant -- then you saw e-mails
19 with defendant and Lilie Chen confirming Eric Lin's e-mail
20 address, saying I'll send the package. Then FedEx records
21 show that defendant sent a package to Eric Lin.

22 Eric Lin in turn on January 2nd, 2014, shipped a
23 package to Austin Yu at SDV Hong Kong, the same Austin Yu who
24 was on the receiving end of all those WIN shipments that you
25 saw in earlier slides and that you've seen in earlier

1 evidence.

2 Again, the contents were described as a glass
3 sample valued at \$100. That is both count 4, which is the
4 mail count, mailing out of the United States, and is also
5 count 2, the export. That was the export of a Cree wafer
6 containing MMIC power amplifiers without a license.

7 There's a variety of e-mails exchanged. Defendant
8 was asking Lilie Chen for tracking information. Then you see
9 an internal RML e-mail chain involving Lilie Chen talking
10 about the airway bill for Z5. Again, Z5, Cree project, the
11 607 project. And the DHL tracking number, Lilie Chen sent
12 for that.

13 It's the same DHL tracking number received from
14 Eric Lin. What Eric Lin mailed was the Z5. There's more
15 e-mails asking about it. At this point defendant also sent
16 the same DHL tracking number to Ye Yuan for the Z5 shipment.

17 Then on the January 15, 2014, important e-mail
18 chain. Defendant wrote: The first run from C, being Cree,
19 is being tested at UCLA and soon at RML. In response
20 co-conspirator Ye Yuan wrote: We already have get the first
21 C, first Cree, and been starting test from yesterday.

22 Cree wafer and the MMICs on that wafer were in
23 Chengdu, China. There's a lot more evidence of this which
24 I'll discuss in connection with count 2, which is evidence
25 that also is proof for count 1.

1 Defendant's wafer spreadsheet, 2010-7. You see the
2 Z5 payments made to Pullman Lane. Ship date for the wafer is
3 listed there, 1/5/2014, right in this time frame. You see
4 again that defendant is directing payment to be made from
5 various companies to his Pullman Lane account for Z5.

6 Now, at this point defendant had achieved the first
7 run of Cree wafers and at least one Cree wafer -- the MMICs
8 it contained had been sent to Chengdu, China. Kiet Mai
9 testified that defendant had -- about some e-mails with
10 defendant talking about doing further business with Cree.

11 The -- those discussions carried on through 2014,
12 but then another event happened in 2014 which is on
13 August 1st, 2014. Three entities, these three entities and
14 others, were added to the United States entity list. And
15 they were specifically added as having been determined by the
16 U.S. government to be acting contrary to the national
17 security or foreign policy interest of the United States.

18 Those companies, Chengdu GaStone Technology, the
19 company that beginning in 2011 defendant had been president
20 of. There's been various testimony about whether he remained
21 the president of Chengdu GaStone at this time. Documents are
22 contradictory. It appeared that he had possibly been moved
23 to a role of a technical consultant.

24 Nonetheless, the company that he had been the
25 president of for the preceding three years was added to the

1 entity list. CETC 29 was also an investor in Chengdu
2 GaStone, and a Chinese government controlled entity was added
3 to that list as was QTC, the company in which Deng Jieru, you
4 saw testimony, was a manager, and where she had directed
5 payment to come from for the conspiracy.

6 QTC specifically was called out by the end use
7 review committee, which is a committee of various departments
8 of the United States government, for being involved in the
9 illicit procurement of commodities and technologies for
10 unauthorized end use in China.

11 Now, the fraud on Cree didn't stop with run one.
12 Run two planning and implementation took place later that
13 year. Now, the funding this time didn't come through Pullman
14 Lane, didn't come through defendant's accounts. Instead,
15 ended up coming through JYS Technologies' account in Canada.

16 Kiet Mai invoiced defendant for \$117,000 for Cree
17 run number two. This was a lump sum payment this time
18 instead of a series of payments. They paid a bit less and
19 paid it all up front.

20 Again, Kiet Mai made representations to Cree: No,
21 not for export. We're doing development. And Kiet Mai sent
22 an invoice for Cree run two to defendant and his brother,
23 Ishiang Shih. You remember that included -- Kiet Mai said
24 defendant told him that JYS Technologies would be paying him.

25 There was this weird development agreement that

1 Kiet Mai said he downloaded off the internet and had a bunch
2 of parts in it about Indian law. Anyway, that's the document
3 there. Kiet Mai did testify that he never did any work for
4 JYS Technologies.

5 Now, on December 2nd, 2014, defendant e-mailed his
6 brother and co-conspirator, Ishiang Shih, sent him bank
7 information for Kiet Mai's company, MicroEx, which was a
8 d/b/a, doing business as, L2 Contemporary, which is his other
9 business. You recall he has an art galley and then a
10 clothing shipment business.

11 Defendant instructed Ishiang to wire money to Kiet
12 Mai's account. And on December 12th, 2014, a wire transfer
13 of \$120,000 was made from JYS Technologies' bank account in
14 Canada to MicroEx's bank account in the United States. That
15 is the money-laundering count, is that transfer of money from
16 Canada to the United States in order to pay for Cree run two,
17 which was part of the fraud on Cree and part of the computer
18 fraud and also part of the conspiracy.

19 You saw records that show the incoming wire into
20 Kiet Mai's bank account. Then the money had a little bit of
21 a circular route to get to Cree. It moved from his Bank of
22 America account to his Morgan Stanley account. Then he moved
23 it to a portfolio loan account also at Morgan Stanley.

24 Then on December 17, 2014, from that portfolio loan
25 account, he wired \$117,000 to Cree to pay for Cree run two.

1 That's count 8. That's the other wire fraud. The two wire
2 frauds, 7 and 8, are the payments from Morgan Stanley made by
3 Kiet Mai on behalf of defendant for Cree services.

4 Now, Cree manufactured the run two wafers and on
5 March 20th, 2015, shipped them. That's count 5. Mail --
6 that's another mail fraud count, another part of the fraud on
7 Cree. Then defendant's daughter picked them up, and
8 defendant instructed her to send them to co-conspirator
9 Ishiang Shih, his brother in Canada.

10 They were then shipped to Canada by her boyfriend
11 actually. That's count 6. That's the last mailing of the
12 four mailings that were part of the mail fraud count. So
13 that wasn't the end for run two, however. In 2015 defendant
14 e-mailed RML and Jieru Deng after coming back from a vacation
15 and said: I just found out we haven't gotten the money. As
16 the delivery of the GaN wafer is pending full payment, please
17 help process the fund at your earliest convenience.

18 Later that year he e-mailed with his brother and
19 co-conspirator about the GaN wafers. You can see the e-mail
20 there: I don't recall if we discussed the two diced GaN
21 wafers. If you brought them with you, please do not give
22 them to anyone yet. Please hold them until I return to CD.

23 As you heard during this trial, CD is Chengdu. His
24 brother replied: I'll keep the samples with me until you are
25 here -- that is, until defendant is in Chengdu.

1 Records show that defendant traveled from
2 Los Angeles to China a little bit later that summer. Then
3 shortly after his return, two payments were made to Pullman
4 Lane from One Five Nine Investment Holding. Those payments
5 totaling \$259,000 were booked in the wafer run spreadsheet on
6 Z5 for the entry in the spreadsheet corresponding to the
7 second Z5 run, the second Cree run.

8 So you've seen a lot of proof of agreement. The
9 co-conspirators were working together to achieve a variety of
10 goals, and you've seen them in their documents. You've seen
11 them in their own words.

12 Now, in order to prove the conspiracy count in this
13 case, it's necessary that the government show that defendant
14 and his co-conspirators were knowingly and willfully engaged
15 in this conduct. How do you know that it was knowing and
16 willful? Again, defendant is a businessman. He's worked for
17 decades in the microwave industry. He's familiar with the
18 ins and outs of this business and with the issues that arise
19 internationally.

20 At MMCOMM defendant was the export specialist. You
21 heard the testimony of Jesse Lu. MMCOMM did export MMICs,
22 and defendant understood the laws. He was the ultimate
23 authority at MMCOMM. Remember, Jesse Lu said he would always
24 go to defendant with those export questions, and defendant
25 knew what to do and what not to do.

1 Indeed when MMCOMM was purchased by Honeywell,
2 documents related to that purchase which were found at
3 defendant's home show that there was a due diligence
4 checklist for MMCOMM when Honeywell bought them.

5 Among the questions on there were: Does the
6 company export goods or technology? Yes. Does it have
7 goods, products, or technology controlled under the EAR?
8 Yes. Does it have a program to ensure compliance? Yes. Who
9 are designated to ensure compliance? Jesse Lu and defendant.

10 Going on. Had procedures in place to determine
11 whether U.S. export controls apply for exports or reexports.
12 Product classifications, the ECCNs that you've heard about.
13 Destinations. End user, ultimate end user. Defendant was in
14 charge of audit and review for export at the company where he
15 was president.

16 Jesse Lu told you defendant was a knowledgeable
17 person about export controls. He also received training when
18 he worked at Honeywell. You saw Mr. Pasco went through some
19 of those presentations, talked about defendant's training.

20 At defendant's house a number of documents were
21 found including, for example, BIS major cases list which
22 described cases that BIS had been involved with, one of which
23 was an export of amplifier chips to China.

24 He had notebooks with notes on export controls. He
25 had a copy of the commerce control list. He had a copy of

1 the Wassenaar arrangement. He had copies of the entity list
2 and country charts. Defendant was knowledgeable about export
3 laws. He knew about export laws.

4 Defendant's brother and co-conspirator also in 2010
5 sent him a variety of documents about specifically China
6 issues and the BIS's China policies. And defendant's brother
7 and co-conspirator highlighted parts of those documents,
8 including revisions related to items destined for the PRC
9 that are controlled for reasons of national security, exports
10 that would enhance the military capabilities of the PRC,
11 further discussion of items controlled for national security,
12 and concerns about denying exports that would make a direct
13 and significant contribution to China's military
14 capabilities.

15 Now, you saw in presentations that defendant
16 highlighted in presentations. Those circles, red circles
17 highlighted some civilian uses but also military uses in
18 these sales pitches for the company. And that fact that
19 these -- this technology -- sorry, that these MMICs would be
20 used potentially in military applications and indeed in the
21 case of Z5 were for a company that made missile and missile
22 guidance systems.

23 If anything would enhance the knowledge and concern
24 about possible export issues, defendant knew that these were
25 high-powered MMICs and that the items that they were involved

1 with developing in the United States with Cree were subject
2 of export controls.

3 You also see on this slide that those two entity
4 lists, companies, were the major investors in Chengdu
5 GaStone.

6 Now, again, you have seen some of these documents
7 before. You've seen them above. These are the documents
8 that talk about how China is locked out of certain
9 technological areas by export controls. Those documents show
10 knowledge.

11 Again, you've seen these earlier in this
12 presentation, but these documents sent between
13 co-conspirators show their knowledge. Indeed the Chengdu
14 GaStone presentation includes a slide titled embargoed
15 equipment. Embargoed equipment, that's equipment that can't
16 be exported to China.

17 And you also know that defendant's conduct was
18 knowing and willful because of the misrepresentations that he
19 made in the export compliance questionnaire for Cree. You've
20 seen testimony -- and we'll talk about it in just a minute --
21 about the power ratings for these power amplifiers.

22 There are a number of them that are higher than ten
23 watts, and all of these representations about whether things
24 would be controlled are untrue.

25 So with respect to count 1 -- thanks for bearing

1 with me through all of that -- the evidence shows that there
2 was an agreement between defendant and a variety of
3 co-conspirators beginning with Yaping Chen and Ye Fei and
4 continuing on through, and that defendant and his
5 co-conspirators agreed to knowingly and willfully export
6 controlled items without a license to China, and that
7 defendant became a conspirator, knowing of the objectives.

8 In fact, that was the objective, as you see in the
9 documents. Defendant is guilty of count 1.

10 Now, count 2, this is the Cree run one. Now, for
11 count 2, defendant is required to have exported or caused to
12 be exported an export controlled item, MMIC amplifier, from
13 the United States to China. A license was required for that
14 export. Defendant failed to obtain a license, and defendant
15 acted knowingly and willfully.

16 That's the same knowingly and willfully we just
17 talked about with respect to the conspiracy.

18 Now, we've already gone through evidence that the
19 MMIC was shipped to China. You've seen that before. We
20 won't go through it again. You've heard testimony from Eric
21 Lin about shipment and about how Hong Kong is the gateway to
22 China.

23 You've heard similar testimony from Lilie Chen
24 about how he was instructed to ship and down-value items.
25 And you heard testimony from Special Agent Alex Storino of

1 the FBI about how Austin Yu was questioned about the specific
2 shipment, and Austin Yu said that it was picked up and
3 hand-carried into China.

4 Now, was an export license required? Way back at
5 the beginning of the case, you heard from Dr. Chris Nordquist
6 from Sandia National Lab. He conducted tests on some of the
7 MMIC power amplifiers from a wafer that was recovered from
8 UCLA. That's a Cree run one wafer, one of the four that was
9 at UCLA.

10 He tested three of the power amplifier designs, and
11 they all far exceeded the power and frequency performance to
12 be restricted under the commerce control list. And there are
13 two ECCNs, two export classifications both within that 3A001
14 category that the Court instructed you about in instruction
15 29.

16 Both of those -- all three of those designs far
17 exceeded the performance characteristics listed in those
18 ECCNs. In fact, the charts that Dr. Nordquist put together
19 showed that the performance over a wide band of frequencies
20 for those three power amplifiers was more than ten times the
21 power limit that would make them restricted.

22 That was true for each of these power amplifiers,
23 showing the performance here from eight to somewhere in the
24 neighborhood of 13 gigahertz, and for this last one at higher
25 frequencies.

1 Now, you heard testimony from Carlos Monroy, who is
2 an electronics engineer. He's worked for 13 years at the
3 BIS. He works in the area of licensing and licensing
4 determinations. Mr. Monroy testified that all three MMIC
5 power amplifiers were controlled, all three of those designs,
6 and that they required an export license to be sent to China;

7 Now, Mr. Monroy also testified that no exceptions
8 applied. He said -- he told you that a license was required,
9 that MMICs are a commodity. They're a thing. They're a
10 physical thing, that it was sent, that these MMICs were not
11 specially designed for telecommunications.

12 You'll see in jury instruction 29 some discussion
13 of specially designed for telecommunications. However, the
14 testimony that you have from Mr. Monroy is that these were
15 not specially designed for telecommunications. These were
16 not narrow band amplifiers. They were not tuned for special
17 frequency. They were wideband, high-power amplifiers.

18 He also -- he also talked about another exception
19 which you have an instruction on, which is the TMP, the
20 temporary exception. That's jury instruction 30. Now, these
21 MMICs were purchased from Cree. They are subject to purchase
22 order.

23 The temporary exception does not apply when goods
24 are purchased in that manner, and you'll see that in the
25 instruction. These were purchased. These were not a

1 temporary export.

2 Now, there was no license to send Cree MMIC power
3 amplifiers to China, and specifically these ones. You heard
4 very briefly, possibly on the first day of trial, from Thomas
5 Andrukonis at the Bureau of Industry and Security. His
6 responsibilities include the database that includes
7 information about export licenses.

8 There were no export licenses for MMIC power
9 amplifiers from the United States to China for any of the
10 individuals involved in the conspiracy. And there were
11 similarly no licenses for any of the companies involved in
12 the conspiracy. That was testimony that he gave.

13 Now, recall Dr. Nordquist explained to you the
14 layout of the Cree run one wafers. There were two reticles;
15 that is, two different kinds of stamps that were built onto
16 the wafer. Reticule one had nine different MMIC designs on
17 it, and that reticle was copied 80 times across each wafer.

18 So three -- the three MMICs that Dr. Nordquist
19 tested were found on reticle one. Those three MMICs then
20 would have been replicated 80 times, which means every single
21 one of those wafers had 240 export controlled MMICs on it.

22 Dr. Nordquist also testified that -- and you also
23 heard this from Dr. Barner -- that Cree's design -- Cree's
24 manufacturing process is very precise, that they do testing
25 using their process control modules, the PCMs, to ensure that

1 every wafer that they make with a certain design has the same
2 performance characteristics across all of them.

3 In other words, each one of those four wafers was
4 the same. It would perform the same. The MMICs on that
5 wafer would perform the same. So each of the power
6 amplifiers, regardless of which of the four wafers it was on,
7 would perform the same.

8 Now, you recall these e-mails about the wafer going
9 to Hong Kong and then China. There's more evidence that the
10 Cree run -- at least one Cree run one wafer made its way to
11 Chengdu RML in Chengdu, China. On January 22nd, which was
12 about a week after the initial e-mail saying that the first C
13 had arrived and was being tested, Yuan Ye sent a couple of
14 files with an e-mail.

15 There was a file that showed the reticles for Cree
16 run one and some of the names for the power amplifiers,
17 frequencies and simulation data. He also sent an attachment
18 showing test data. So this is the translation of that
19 document, Exhibit 2803, and 2803A is the translation.

20 That again is dated -- so that document is dated
21 six days after the e-mail saying that the first C had
22 arrived. And that document includes a photograph of
23 HG0701-24. That's one of the Cree run one wafers.

24 You heard testimony from Dr. Nordquist that that
25 picture was one of the Cree run one refers. You heard

1 testimony from Dr. Barner that that picture shows one of the
2 Cree run one wafers. That's a wafer in Chengdu, China.

3 The presentation discusses testing methodology. It
4 has a microscopic picture of one of the other power amps on
5 that wafer and discusses the chips that have been tested,
6 which include PA2-1020-A1, which is one of the chips that was
7 also tested by Dr. Nordquist.

8 Indeed the test results for PA2-1020-A1 were
9 attached, were also found in another e-mail. These test
10 results showed test versus simulation. That is, the
11 simulation of the design that was done based on the way it
12 was designed and the actual testing data.

13 And Dr. Nordquist talked about how the test results
14 that were shown in these presentations from Chengdu RML were
15 consistent with his testing and that the performance of these
16 MMICs was consistent with their design.

17 He and Dr. Barner both talked about how the
18 sophisticated tools that are part of the Cree PDK and part of
19 some of the modeling tools used by MMIC designers allowed
20 designers to come up with a concept for what it is they want
21 to build in terms of a power amplifier, to design to those
22 performance specifications, and then to run computer
23 simulations and modeling to ensure that, yes, this design
24 looks like it's going to do what we want it to do before they
25 do the physical manufacturing.

1 Dr. Barner and Dr. Nordquist both talked about
2 that, that building these things is expensive. So you do a
3 lot of modeling beforehand in order to be sure that what
4 you're building performs the way that you intend it to. And
5 these power amplifiers did.

6 In April of that year Li Yuan Yuan also at RML
7 e-mailed defendant a file called Z5 analysis that attached a
8 series of photographs. This is an individual who is on a lot
9 of the e-mails during the design process. There's a series
10 of photographs here in this presentation.

11 The photograph on the left is a microscope photo
12 sent from Chengdu RML of a power amplifier. The photograph
13 on the right is a photograph taken at Sandia National Lab of
14 the same design taken off of the Cree run one wafer.

15 Those -- you will recall Dr. Nordquist testified
16 about doing these wire bonds. Those little black marks are
17 attachments to the MMIC that were part on there as part of
18 the testing process.

19 So power amplifier one, 1020, this is one of the
20 export controlled power amplifiers. There's a picture from
21 Chengdu RML and a picture from Sandia. Same thing for power
22 amplifier two, the two-stage amplifier. And same for 1615,
23 another two-stage amplifier. These pictures shows that the
24 MMIC power amplifiers were in Chengdu.

25 Now, there's been a lot of theatrics in this case

1 about wafers appearing in court, and don't be fooled by that.
2 You saw in Exhibit 2803A where this wafer was in January of
3 2014 and thereafter and where MMICs from those wafers were in
4 those photographs.

5 Now, you've seen a wafer that Dr. Barner told you
6 is the same wafer here in court, and he also -- this is a
7 photograph of that wafer. He also -- and that's the
8 photograph of the wafer in Los Angeles in 2019.

9 Now, Dr. Barner told you this wafer is picked
10 clean. So if you look at that photograph, you'll see there's
11 not a single power amplifier left on that wafer, not a single
12 one. January 2014 in China, full of power amplifiers.
13 Los Angeles, 2019, empty.

14 And you haven't heard any testimony about where
15 this wafer was in between other than the testimony from the
16 paralegal who recovered it last year from defendant. So
17 what's important is where this wafer was and where the power
18 amplifiers on it were in 2014. Don't be distracted. Where
19 it is today doesn't bear on this charge.

20 Again, defendant knew. This was willful. He knew
21 that he was working on a high-power wide bandwidth parts for
22 a client that builds missiles and missile guidance systems.
23 All the evidence for count 1 that showed knowledge about
24 export control laws and export restrictions also applies
25 here.

1 The designs as you heard from Dr. Nordquist were
2 intended to be wideband and high power MMICs. And both
3 Dr. Nordquist and Dr. Barner testified, again as I noted,
4 that they performed as designed and that they were built to
5 perform as they did.

6 There's also a very important e-mail in this
7 respect about defendant's knowledge. During the design
8 process for the Cree run one wafers, defendant exchanged this
9 e-mail with Li Yuan Yuan, the person who sent those
10 photographs, and Yuan Ye at RML about the GaN reticle design:
11 For the circuit naming, let's avoid any frequency-related
12 words, KU or X. Recall those are bands that Dr. Nordquist
13 identified as microwave bands typically associated with
14 radar. And don't include power units.

15 Defendant's e-mail gives the naming scheme for
16 these and the way that they were named and the names that you
17 saw. Those names were designed to avoid references to the
18 frequency range at which the chips operated and the power
19 with which they operated.

20 And as you've heard during this case, frequency
21 range and power and performance are key factors in whether a
22 MMIC power amplifier is export controlled. Defendant knew
23 that these designs were for making export controlled MMICs.

24 Defendant exported or caused to be exported
25 controlled items. A license was required. Failed to obtain

1 a license and acted willfully.

2 Now, that brings us out of the export crimes and
3 into the balance of the indictment. You've already heard a
4 lot of the evidence for the balance of the indictment, so
5 this part will move a little bit more quickly. I'm not going
6 to repeat all the evidence.

7 So the mail fraud and wire fraud counts both --
8 they're different because mail fraud requires use of the
9 mails. Wire fraud requires use of a wire. But other than
10 that -- and you'll see this in the jury instructions 31 and
11 33 -- they're essentially parallel except for the last part,
12 which is whether he used mail or wire as part of the fraud.

13 These all require a scheme or plan to defraud; that
14 is, to obtain money or property from Cree by means of false
15 or fraudulent pretenses. They require statements made in the
16 course of the scheme that were material; that is, statements
17 that would cause Cree to part with money or property. That
18 defendant acted with the intent to defraud; that is, the
19 intent to deceive. And use of the mails or of an interstate
20 wire.

21 So the scheme was a scheme to acquire MMICs
22 manufactured using Cree's 0.25 micrometer GaN process. That
23 is, the scheme to get Cree to manufacture these MMICs for
24 defendant and his co-conspirators in China for AVIC 607.

25 Now, Cree was paid for its services. But if you

1 look at the jury instructions, that's not an element. Was
2 Cree not paid? That's not an element. The scheme was to
3 cause Cree to do something to part with property that it
4 wouldn't have parted with if it had known the truth. That is
5 the essence of a scheme to defraud.

6 Defendant using Kiet Mai deceived Cree about the
7 ultimate client, about the nature of designs. Recall the
8 naming conventions, the export compliance questionnaire,
9 about the intended use of the MMICs. These MMICs were to be
10 exported. About the intended destination, China.

11 Didn't tell Cree any of that. Didn't tell Kiet Mai
12 to tell Cree that either. And you heard Cree would not have
13 entered agreements with MicroEx if it had known the truth.

14 Cree was defrauded. Cree never would have done
15 business with MicroEx if it knew it was really doing business
16 with defendant and his co-conspirators and a team of
17 designers at Chengdu RML.

18 There are too many exhibits to list in terms of the
19 concealment. The defendant constantly communicated using
20 Kiet Mai as a sock puppet to hide behind for more than two
21 years. The lies. Will there be design testing and use of
22 the MMICs? It will all be done by MicroEx. Yes.

23 That was very important. Dr. Barner told you that
24 was very important to Cree in terms of agreeing to do
25 business with MicroEx. No, not for export. We're doing

1 development. Again, these are misrepresentations made in the
2 course of the conspiracy -- or, I'm sorry, in the course of
3 the fraud to induce Cree to do business, to induce Cree to
4 build the MMICs and to ship them to Kiet Mai, who then gave
5 them to defendant.

6 And you see in jury instruction 32 that a defendant
7 can be liable for the misrepresentations of a co-schemer.
8 Here the co-schemer is Kiet Mai. So these -- these
9 representations by Kiet Mai are as good as representations by
10 the defendant.

11 You also heard from Dr. Jeff Barner. The lies
12 matter. They were material. This was all information that
13 if Cree had known it, they would've not entered business with
14 Kiet Mai and MicroEx.

15 Why use -- why else use Kiet Mai and MicroEx?
16 MicroEx didn't do any design work. Kiet Mai didn't do any
17 design work. Defendant clearly is capable of using e-mail to
18 communicate with people. He could just as easily have
19 e-mailed with Dr. Barner.

20 But as you know from the evidence in this case,
21 Cree would not have manufactured MMIC power amplifiers for
22 Chengdu RML or Chengdu GaStone and would not have shipped
23 these to China.

24 So you have the scheme. You have material
25 misrepresentations. And you have the intent to defraud, the

1 intent to hide from Cree. So you have the four counts. So
2 these are counts 3 through 6. Count 3 is the mailing of Cree
3 run one to Kiet Mai. Count 4 is the mailing of Cree run one
4 to Hong Kong by Eric Lin. Count 5 is the second run.
5 Count 6 is the mailing of the second run out of the
6 United States to Ishiang Shih.

7 Now, you also see in the instructions that the
8 mailing itself or the wire itself doesn't have to be somehow
9 fraudulent, just that it's done in furtherance of the scheme.
10 Specifically it doesn't matter whether the material mailed
11 was itself false or deceptive so long as the mail was used as
12 part of the scheme.

13 Indeed it doesn't even matter if the scheme was
14 successful. The scheme was successful here. So on the mail
15 fraud counts, the evidence plainly demonstrates that the
16 defendant is guilty of mail fraud on all four counts.

17 Now, with respect to wire fraud, it's the same
18 evidence that supports the scheme to defraud, materiality and
19 intent to defraud. But in this instance the two payments or
20 the two uses of the wire or the wire payments for Cree run
21 one and Cree run two, both made with money, in the first
22 instance money received from Pullman Lane to Kiet Mai and
23 MicroEx, and the second instance money that was wired from
24 JYS Technologies bank account in Canada to Kiet Mai to pay
25 for run two.

1 Again, wire fraud. Evidence shows defendant is
2 guilty.

3 Now, there's a second conspiracy count in the
4 indictment, and this relates to access to the Cree portal.
5 The charge is an agreement -- it requires an agreement again,
6 in this case to authorize a protected computer and thereby
7 obtain information in furtherance of a criminal act.

8 And those criminal acts are the ones that we've
9 talked about, the export control violation and the mail and
10 wire fraud.

11 Now, again, this conspiracy is -- just the
12 agreement itself is a crime. But here the agreement to
13 access the protected computer is a crime. The protected
14 computer is Cree's computer. You saw Cree's portal.

15 You heard testimony from Mr. Whitlock and Dr.
16 Barner about the lengths to which Cree went to protect its
17 computer systems, about the fact that there were only -- you
18 could only access the system as an authorized user, that
19 authorized users had limited access.

20 And the only authorized user in this case was
21 MicroEx and Kiet Mai. MicroEx signed up with Cree. MicroEx
22 was Cree's employee -- I'm sorry. MicroEx was Cree's
23 customer, not employee. And Kiet Mai gained access to the
24 Cree portal, to manuals and to the process design kit through
25 the business relationship with Cree, a business relationship

1 entered into by Kiet Mai under false pretenses on behalf of
2 defendant.

3 And notably defendant wasn't an employee of
4 MicroEx. Defendant didn't work for Kiet Mai. Defendant just
5 paid Kiet Mai to get access.

6 Now, Dr. Barner e-mailed the access. You have seen
7 these before. Defendant received access from Kiet Mai. Now,
8 you heard this testimony about the portal secure system.
9 Every user has an account and password.

10 If another designer at MicroEx needed an account,
11 Dr. Barner said they would be given an account so that they
12 could access it. And there's different levels of access
13 depending on your type of user account.

14 You saw the e-mails. Defendant was using the Cree
15 portal. We've spoken about this evidence before. The Cree
16 portal logins were found on defendant's computer. Foundry
17 manuals were found on his computer. PDK listings were found
18 on defendant's computers.

19 And importantly, Chengdu RML designers were
20 designing MMICs using the Cree process, which means they were
21 using the Cree PDK. And Kiet Mai said the only person he
22 gave the login to was defendant.

23 Again, here it's not required that the actual crime
24 be committed for a conspiracy. It's just the agreement to
25 get the access that is the crime itself.

1 Now, count 10 we've spoken about already, is a
2 money-laundering count. In order to find defendant guilty on
3 this count, you need to find someone transported funds to
4 promote unlawful activity, that defendant aided and abetted
5 that transportation, that defendant intended to facilitate
6 the crime to promote the unlawful activity, and that
7 defendant acted before the crime was committed.

8 Now, here there are several crimes that this money
9 was used to promote. This payment was in December of 2014.
10 It was made before the wire payment to Cree. In fact, it was
11 made in order to facilitate that wire payment to Cree. It
12 was made before the two mailings related to Cree runs, Cree
13 run two, which both happened in 2015. And it was made during
14 the course of the IEEPA conspiracy and the computer fraud
15 conspiracy.

16 So I've listed the counts here that this relates
17 to. It's 1, 5, 6, 8, and 9. You've seen this e-mail before.
18 Defendant e-mailed his brother and instructed him to wire
19 money, and defendant's brother did wire money. That money
20 went from JYS to MicroEx, and that money was used pay for
21 Cree run two. \$120,000 sent, and 117,000 of it went to Cree.

22 The evidence demonstrates the defendant is guilty
23 on count 10.

24 Count 11. Count 11 is a count charging defendant
25 with making false statements to the FBI. There are three

1 false statements you've heard about. Now, first, it's
2 necessary that defendant know it's untrue and know that it
3 was unlawful to lie to the FBI. You recall defendant was
4 given advice of his rights and given advice in the recordings
5 you've heard. And you've seen documents that show that he
6 was told that lying to the FBI was a crime.

7 During his January 19th, 2018, interview, defendant
8 is charged with making three false statements: No Cree
9 wafers went to China. No Cree wafers went to Hong Kong. The
10 defendant was not working on GaN in China.

11 Evidence related to those, the advice of rights,
12 and you also heard in the recordings the advice of rights.
13 The recordings of statements, Exhibit 1613, has the two
14 claims about whether wafers and specifically those wafers,
15 the Cree wafers containing GaN MMICs, went to China or Hong
16 Kong. And 1621, defendant's claim that he was not working on
17 GaN in China.

18 You heard testimony of Special Agents Robert Berger
19 and Alex Storino related to the interview and the recordings.
20 You've seen that Cree run one wafer indeed went to China, and
21 that Cree run one wafer went to China through Hong Kong
22 through Austin Yu.

23 There are just too many exhibits to list that show
24 the defendant was working on GaN in China. All the
25 presentations, e-mails, communications about designing the

1 GaN MMICs with Chengdu RML in China, all of those show that
2 defendant was working on GaN in China.

3 The defendant is guilty of lying to the FBI.

4 Now, let's talk about taxes. The tax counts relate
5 to defendant's tax returns for 2011, 2012, and 2013. The
6 government needs to show to prove this that defendant signed
7 a false tax return. You saw the instruction about electronic
8 filing is the same as signing under penalty of perjury, and
9 that defendant acted willfully.

10 Now, the tax returns are these: count 12, 2011;
11 count 13, 2012; count 14, 2013. The returns were false.
12 You've seen evidence in this case that defendant didn't
13 report \$335,000 of income on his 2011 tax return. That was
14 the income paid in to the secret Hong Kong Standard Chartered
15 bank account by Mystical Optimism.

16 That was in addition to the salary that defendant
17 was receiving for his role as the president of Chengdu
18 GaStone. He did report that income, the Chengdu GaStone
19 income.

20 Count 13, more money from Mystical Optimism and
21 also dividends on the money in that account. Count 14,
22 dividends received. That is money received based on money
23 already held in the accounts.

24 Now, for defendant to have to report it, the
25 \$67,000 a month had to be income to the defendant. It was

1 income. The evidence has shown conclusively that it was
2 income. It was regular payments made every month, the same
3 amount every month, \$67,000. Judy Chen at the direction of
4 Yaping Chen, co-conspirator, his longtime co-conspirator,
5 explained that it was monthly compensation for defendant and
6 others and that project payments were separate.

7 The Mystical Optimism payments were untaxed. Judy
8 Chen didn't withhold taxes for China, for the United States,
9 for anything from this account held by a British Virgin
10 Islands company.

11 Exhibit 608A shows the transactions related to
12 these payments. It also includes a chart, a chart of
13 recipients of money, how much money they were going to get,
14 if they were paid monthly or quarterly.

15 Defendant was paid \$67,000 a month. That was his
16 pay, and it was the most that anybody was getting. And it
17 was paid over and over and over again like clockwork. You
18 see in the spreadsheet, over and over again, entries with
19 other co-conspirators each getting their monthly payout.
20 This was income.

21 There was -- project payments and other things were
22 treated differently. May 2012, for example, defendant got
23 his \$67,000. And then there was a payment to defendant for
24 tape-out expenses. You recall there was testimony that
25 tape-out is the process when you actually manufacture the

1 wafers based on some design.

2 September 2012 you see the same thing. There was a
3 payment to defendant and then there's project payments, in
4 this case to JYS for projects. So, income, \$67,000 a month
5 was income. Here's an example from the exhibits. This is a
6 payment sent to defendant, Exhibit 1102. This is the advice
7 on -- advice related to the transfer in November 2012.

8 At the same time this is defendant's statement from
9 his secret Standard Chartered Hong Kong bank account. In
10 that bank account you see the same deposit. It's listed in
11 Hong Kong dollars, which is why it says 518,432. If you look
12 back here, you can see that same number. The U.S. dollar
13 amount was converted to Hong Kong dollars because that
14 account is a Hong Kong dollar account.

15 You also see on this statement dividends that were
16 paid in to that account. Those dividends are just based on
17 the balances that are held. Now, you also know that it's
18 income because of the way defendant treated it. Defendant
19 treated it like it was his money. He used it for
20 investments.

21 You saw e-mails about allocations of that money in
22 that account and in a Coutts account for investments. He put
23 it in a secret Hong Kong account that was held in his and his
24 wife's name.

25 You can see the bank statements. These were all

1 recovered from defendant's computer here in the United States
2 which was searched by the FBI. Bank statements from Standard
3 Chartered, October 2012 to July 2014. The only large
4 transfers out of those accounts were to another account at
5 Coutts in Hong Kong, which is another secret bank account
6 held by defendant.

7 And you know that defendant -- that this money was
8 income and compensation to the defendant because he treated
9 it like that. Again, this file was located on defendant's
10 computer. Documents, personal, personal to Shihs, the Shihs'
11 assets. This is an Excel spreadsheet listing the assets.

12 This document, Exhibit 2785, includes things like
13 cars, homes, U.S. bank accounts, credit cards, retirement
14 account, and Coutts and Standard Chartered. Those bank
15 accounts contained money that belonged to defendant. They
16 were Shih's assets. They were defendant's assets.

17 As such, because they were his assets and they were
18 compensation that was paid to him, he needed to pay taxes on
19 them.

20 And defendant acted willfully. We've already
21 talked about this. We'll talk about it again. Defendant
22 opened an account at Standard Chartered Bank in Hong Kong.
23 He used his Taiwanese passport to open the account, and he
24 claimed he wasn't a U.S. citizen.

25 Defendant did not report his Hong Kong accounts on

1 his FBARs. We've seen that testimony. You heard from
2 Mr. Tremaglio from FinCEN.

3 Now, defendant concealed his income and his bank
4 accounts when he talked to his accountant. He sent little
5 spreadsheets with all of his assets and his income and
6 everything each year to his accountant to help in the
7 preparation of his tax returns, and each year he lied to his
8 accountant about his income.

9 You see that in the spreadsheets that defendant
10 shared with his accountant, and you see that in the answers
11 defendant gave to his accountant. And defendant lied about
12 his foreign income when he was questioned by federal agents.
13 He again identified the two China CITIC Bank accounts.
14 Didn't identify any other bank accounts or assets.

15 Defendant knew he had to report foreign income. He
16 knew, and he did report foreign income. He reported his
17 income from GaStone Technology. He reported his salary as
18 the president of GaStone.

19 And he knew he had to report foreign bank accounts.
20 He filed FBARs every year in which he listed the two China
21 CITIC accounts, but he didn't list the secret Hong Kong
22 accounts.

23 Now, as you saw in the documents, reporting his
24 GaStone income had little effect on the taxes defendant owed.
25 That's in part because he was working abroad, and that's in

1 part because he was getting credit for Chinese taxes he paid
2 on that salary. So the impact that defendant felt from
3 disclosing the existence of his Chinese income was very
4 little.

5 You see in Exhibit 1411 his 2012 return. The tax
6 owed before credits was \$67,000. He got \$56,000 of credit
7 for Chinese taxes. So the impact of reporting that Chinese
8 income was very low.

9 But you saw the analysis done by Special Agent
10 Carlos Tropea of what the impact of reporting his income into
11 this secret Hong Kong bank accounts would have been. And the
12 impact of reporting that income and those dividends would
13 have been almost \$363,000 in additional tax owed.

14 This was material. Defendant signed and filed tax
15 returns under penalty of perjury, and he acted willfully. He
16 knew that he needed to report foreign income. He knew he
17 needed to report foreign bank accounts, and he didn't do it.

18 Now, the last four counts are what are called the
19 FBAR counts. I'll just keep calling them FBAR accounts
20 because that's easier. Now, for those you can look at the
21 jury instructions. The defendant had to knowingly conceal a
22 fact which he had a duty to report by any trick, scheme, or
23 device.

24 Within the jurisdiction of the Treasury Department,
25 you heard from Mr. Tremaglio. FinCEN is part of the Treasury

1 Department. The defendant acted willfully, and the statement
2 was material.

3 Now, FinCEN maintains FBARs. The FBAR form itself
4 as you saw said that it should be used to report a financial
5 interest, signature authority, or other authority over one or
6 more financial accounts in foreign countries. That is when
7 the accounts as a total contain \$10,000 or more.

8 So that would -- if there was five accounts and
9 they all had \$9,000, that would be \$45,000. You would have
10 to report those because the total is more than 10,000.

11 Now, here defendant filed an FBAR on May 6, 2014.
12 Again, he sent his accountant a spreadsheet that was false.
13 It listed only the two China CITIC accounts. FBAR was filed.
14 You can see from other evidence in this case that the secret
15 Standard Chartered account had almost a million U.S. dollars
16 in it in 2013. And so did the Coutts Hong Kong account. So
17 those were not reported.

18 Again in 2014 the spreadsheet identifies just those
19 two China CITIC accounts. There is no other foreign asset,
20 defendant wrote to his accountant. That's not true. There
21 is this Standard Chartered Hong Kong account and this Coutts
22 account that the evidence shows he had approximately a
23 million dollars and over a million dollars in Standard
24 Chartered in 2014.

25 Count 17, another spreadsheet that doesn't list

1 Standard Chartered account. There weren't records for the
2 Coutts account, so only the Standard Chartered account is
3 listed here. And that had over a million dollars in it in
4 2015.

5 Same in 2016. Same spreadsheet that lists the
6 Chinese CITIC accounts and nothing about the Standard
7 Chartered account. Nothing about the Standard Chartered
8 account in any of the FBAR filings for any of those four
9 years. So on each of the FBAR counts, counts 15 through 18,
10 defendant is guilty, guilty of failing to disclose those bank
11 accounts.

12 Now, the evidence has shown that Cree MMICs were
13 acquired by defendant through fraud and deceit, fraud and
14 deceit on Cree, and were shipped to Chengdu, China, where
15 they were part of the Z5 project, a project that defendant's
16 own documents indicate was for AVIC 607, a company engaged in
17 development of missiles and missile guidance systems.

18 The evidence has also shown that the fraud on Cree
19 was part of defendant's larger conspiracy to establish a
20 gallium arsenide and gallium nitride foundry in China to
21 compete with Cree and other companies and to conquer the
22 world market. Those are the words from the presentations.

23 The evidence has shown the defendant had a large
24 financial reason to engage in this conduct. He was paid a
25 lot of money for his role in this conspiracy, much of it to

1 his secret Standard Chartered account in Hong Kong. That's
2 the greed.

3 And then there are the lies, lies on export
4 paperwork claiming that the wafers were glass samples, lies
5 on export paperwork about the value of the goods being
6 shipped, lies to Cree about who is buying their services,
7 lies to his accountant, lies to the IRS about income, lies to
8 the Treasury Department about foreign bank accounts, lies to
9 the FBI about what defendant was doing in China.

10 Greed, lies, and MMICs. The evidence is
11 overwhelming. On each count of the indictment, the evidence
12 shows that defendant is guilty beyond a reasonable doubt.

13 THE COURT: Thank you, Mr. Shobaki.

14 Ladies and gentlemen, we'll take a 20-minute break
15 here, and then we'll here from Mr. Spertus.

16 THE CLERK: All rise.

17 (Open court - jury not present)

18 THE COURT: Please be seated.

19 Anything we need to discuss before your response?

20 MR. SPERTUS: No, Your Honor.

21 THE COURT: Thanks.

22 (Recess taken at 12:13 p.m.)
23
24
25

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN
THE ABOVE MATTER.

FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ Miriam V. Baird

07/09/2019

MIRIAM V. BAIRD
OFFICIAL REPORTER

DATE